United States Court of Appeals

for the Second Circuit

JOINT APPENDIX

ORIGINAL

76-7247

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P/S

United States Court of Appeals
FOR THE SECOND CIRCUIT

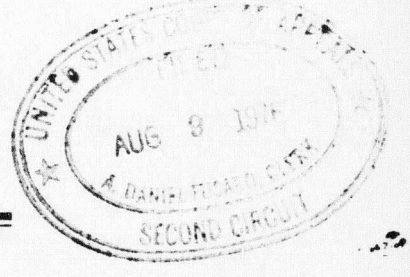
RUTH ANN REED, as Administratrix of the Estate of DAN WILLIAM REED, deceased, and as parent, natural guardian, and best friend of CYNTHIA ANN REED, DEBORA LYNN REED and JULIE MARIE REED, all infants, et al.,

Plaintiffs-Appellees,

v.

FORWOOD CLOUD WISER, JR., and RICHARD E. NEUMAN,

Defendants-Appellants.



ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

JOINT APPENDIX

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INDEX TO APPENDIX

PAGE

Docket Entries A1

Complaint A5

Answer A18

Plaintiffs' Notice of Motion A29

Affidavit of Stanley J. Levy, Read in Support of Plaintiffs' Motion A30

Complaint—Identical to Complaint printed herein at pages A5 to A17.

Answer—Identical to Answer printed herein at pages A18 to A28.

Exhibits Annexed to Plaintiffs' Supporting Memorandum of Law:

Exhibit "A"—Scarf v. T.W.A. Opinion A35

Exhibit "B"—Scarf v. T.W.A. Second Opinion A37

Exhibit "C"—Hoffman v. B.O.A.C. Opinion .. A38

Exhibit "D"—Article by Dr. Otto Riese A39

Exhibit "E"—Wanderer v. Sabena Opinion .. A44

Exhibit "F"—Documents of the International Conference on Private Air Law, 2 I.C.A.O. Doc. No. 7686-LC/140 (Selected Pages) A46

Exhibit "G"—Minutes of the International Conference on Private Air Law, 1 I.C.A.O. Doc. No. 7686-LC/140 (Selected Pages) A54

PAGE

Exhibit "H"—Alexandre v. E.A.L. Opinion ... A75

Exhibit "I"—(a) Convention on Damage Caused by Foreign Aircraft to Third Parties on the Surface. Done at Rome on 7 October 1952, 310 U.N.T.S. 181 (Selected Pages) A76

(b) Convention, Supplementary to the Warsaw Convention, for the Unification of Certain Rules Relating to International Carriage by Air Performed by a Person Other than the Contracting Carrier. Signed at Guadalajara, on 18 September 1961, 500 U.N.J.S. 31 (Selected Pages) A79

(c) Guatemala City Protocol. Protocol to Amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air Signed at Warsaw on 12 October 1929 as Amended by the Protocol Done at the Hague on 28 September 1955, A. Lowenfeld, Aviation Law Documents Supplement, 435 A82

Exhibit "J"—Convention For the Unification of Certain Rules Relating to International Transportation by Air, Done at Warsaw 29 October 1929, 49 Stat. 3000; T.S. 876 (Chapter 3) A84

Exhibit "K"—Warsaw Minutes (Selected Pages) A88

PAGE

Affidavit of Edward M. O'Brien Read in Opposition to Motion A101

Affidavit of Richard E. Neuman Read in Opposition to Motion A106

Exhibit "A"—Passenger Ticket Coupon (M. F. Orphan) A107

Exhibit "B"—Passenger Ticket Coupon (Mrs. T. Orphan) A108

Exhibit "C"—Passenger Ticket Coupon (M. E. Orphan) A109

Exhibit "D"—Passenger Ticket Coupon (Dr. Dan Reed) A110

Exhibit "E"—Passenger Ticket Coupon (J. Michel) A111

Exhibit "F"—Passenger Ticket Coupon (Mrs. K. Michel) A112

Exhibit "G"—Passenger Ticket Coupon (Mr. John Gilday) A113

Exhibit "H"—Passenger Ticket Coupon (Mr. E. Bard) A114

Exhibit "I"—Passenger Ticket Coupon (Mr. S. Bard) A115

Exhibit "J"—Conditions of Contract A116

Affidavit of Richard H. Aime Read in Opposition to Motion A117

Exhibit "A"—T.W.A. Local and Joint International Passenger Rules Tariff No. R-3 ..... A119

PAGE

Reply Affidavit of Stanley J. Levy Read in Support of Motion A131

Exhibit "L"—Warsaw Minutes, pp. 92, 93 & 97 A137

Exhibit "M"—World Aviation Directory, Fall 1975 (Selected Pages) A143

Exhibit "N"—Warsaw Minutes, pp. 157-160 .. A150

Exhibit "O"—Enrique Mapelli Lopez: "El Contrato de Transporte Aero Internacional" 246-250 (1968) (English Translation) A157

Exhibit "P"—Stratton v. Trans-Canada Airlines (Opinions) A165

Exhibit "Q"—Guadalajara Minutes, p. 134 ... A191

Exhibit "R"—Guadalajara Minutes, p. 197 .. A192

Exhibit "S"—T.W.A. Local and Joint International Passenger Rule Tariff No. K-3 ..... A193

Exhibit "T"—14 C.F.R., pp. 120-123 ..... A211

Exhibit "U"—14 C.F.R., pp. 277-278 ..... A215

Supplemental Affidavit of Edward M. O'Brien Read in Opposition to Motion A217

Exhibit "K"—39 Fed. Reg., No. 7 (1/10/74) pages 1526-1529 ..... A227

Exhibit "L"—Vol. Grand Larousse Encyclopedia (Deces; Translation) A231

Exhibit "M"—Agreement CAB 20618-R4 re Passenger Ticket—Conditions of Contract A237

PAGE

Supplemental Affidavit of Stanley J. Levy Read in Support of Motion A241

Exhibit "V"—U.S. Dept. Labor, "Purchasing Power of the Consumer Dollar" A257

Exhibit "W"—C.A.B. Compilation of Accident Statistics 1964-1973 ..... A261

Exhibit "X"—III Cong. Record 17,882 (1965).. A268

Exhibit "Y"—III Cong. Record 15,596 (1965).. A272

Exhibit "Z"—III Cong. Record 16,716 (1965).. A274

Exhibit "AA"—III Cong. Record 20,165 (1965) A276

Exhibit "BB"—Stevenson v. SUD Aviation, et al., Order entered 9/15/69 ..... A278

Exhibit "CC"—1969 C.A.B. Reports p. 879 re Docket 17828 Agreements C.A.B. 20618, R-2 through R-5 ..... A281

Opinion-Order, Frankel, J.

Granting Plaintiffs' Motion to Strike Defendants' Affirmative Defense A285

Memorandum-Order Certifying Case for an Interlocutory Appeal A301

Order of the Court of Appeals granting Leave to Appeal Pursuant to 28 U.S.C. Sec. 1292(b) A302

Docket Entries.

CIVIL DOCKET
UNITED STATES DISTRICT COURT

JUDGE FRANKEL

Jury demand date:

pltf. 5-1 75

75 Civ. 4015

DATE	PROCEEDINGS
08-13-75	documents 1 thru 11—received and FILED (transferred from District of N.J.) including complaint and ORDER TRANSFERRING proceedings to the S.D. of N.Y., Biunno, J., including true copy of docket entries D. of N.J.
09-05-75	12) Filed ANSWER of defendants.
09-05-75	13) Filed defts' notice to take depositions of plaintiffs on dates indicated herein.
09-05-75	14) Filed defts' interrog. to pltf. James K. Orphan, (re Estate of Emily Orphan)
09-05-75	15) Filed defts' interrog. to pltf. Ruth Ann Reed.
09-05-75	16) Filed defts' interrog. to pltf. Jean F. Gilday.
09-05-75	17) Filed defts' interrog. to pltf. Gily Epstein.
09-05-75	18) Filed defts' interrog. to pltfs. Rose Baum Kraut and First National City Bank.
09-05-75	19) Filed defts' interrog. to pltf. Rose Baum Kraut.
09-05-75	20) Filed defts' interrog. to pltf. Gily Epstein. Bard.
09-05-75	21) Filed defts' interrog. to pltf. James K. Orphan. (re Estate of Vasilki Orphan)

Docket Entries.

DATE	PROCEEDINGS
09-05-75	22) Filed defts' interrog. to pltf. James K. Orphan. (re Estate of Paula Orphan)
09-16-75	Case reassigned to FRANKEL, J.
09-23-75	23) Filed Defts Forwood Cloud Wiser, Jr. and Richard E. Neuman's response to request for production of documents.
09-24-75	(24) Filed affdvt. & notice of motion striking the 2nd affirmative defense set forth in defts answer . . . or for partial summary judgment . . . Ret. 10-8-75
09-24-75	(25) Filed memorandum in support of pltff's motion to strike as indicated. . . .
10-08-75	—Filed pltffs. notice of taking depositions of certain Trans World Airlines officers and employees as named on the dates and times indicated. (see 75 Civ. 3136 N)
10-09-75	—Filed stip & order extending pltffs' time to answer interrogs. to 11-11-75. So ordered—FRANKEL, J.
11-10-75	(26) Filed Pltffs' Rule 9(g) Statement.
11-13-75	—Filed stip & order extending pltffs' time to answer interrogs. to 12-02-75. So ordered—FRANKEL, J. (m/n) (see 75 Civ. 3136)
12-22-75	Filed defts affdvt in opposition to pltffs motion to strike that portion of defts answer, the second affirmative defense, or partial summary judgment, etc.
12-23-75	Filed defts Rule 9(g) statement.
12-23-75	Filed deft's memo of law in opposition to pltffs motion to strike the second affirmative defense or in the alternative for partial summary judgment.
12-19-75	Filed Stip & Order extending to 1-6-75 for pltff to answer deft's interrogs. . . . FRANKEL, J.

Docket Entries.

DATE	PROCEEDINGS
1- 7-76	Filed pltff (Jean Gilday's) answers to interrogs.
2- 5-76	Fld Pltffs' Reply Affdvt by S. J. Levy, to defts' Memo of Law opposition pltff motion to strike defts' 2 affirm. defense.
2- 5-76	Pltff Memo of Law in support of Reply to deft's memo of Law.
2-11-76	Filed pltff Rose Baum Kraut's answers to interrogs propounded by defts.
2-11-76	Filed pltff Ruth Ann Reed's answers to interrogs propounded by defts.
2-11-76	Filed pltff James K. Orphan's answers to interrogs propounded by defts. (Vasiliki Orphan)
2-11-76	Filed pltff James K. Orphan's answers to interrogs propounded by defts. (Emily Orphan)
2-11-76	Filed pltff James K. Orphan answers to interrogs propounded by defts. (Paula Orphan)
2-11-76	Filed pltffs Rose Baum Kraut's & First Nat'l City answers to interrogs propounded by defts. (Kathryn M. Michel)
3-8-76	Filed Stip & Order that pltff (Gily E. Bard's) time to answer defts interrogs are extended to 3-16-76. . . . FRANKEL, J.
3-22-76	Filed pltff Gily Epstein Bard's answers to interrogs by deft.
3-22-76	Filed pltff Gily Epstein Bard's answers to interrogs propounded by defts.
4- 1-76	Filed defts supplemental affdvt in opposition to motion.
4- 1-76	Filed defts supplemental memo of law in opposition to motion.
4-15-76	Fld Pltff's Suppl. Affdvt in support of pltffs' motion to strike defts' Second Affirm. Defense.

Docket Entries.

DATE	PROCEEDINGS
4-15-76	Fld Pltffs' suppl. Memo of Law in support of their motion to strike.
4-19-76	Filed Opinion & Order #44261. The motion to strike deft's second affirmative defense will be granted, as the Warsaw Convention does not limit the liability of employees or agents of a carrier, & TWA's tariff does not purport to otherwise limit its, or its employees' liability. . . . So Ordered, FRANKEL, J. m/n
4-22-76	Filed Memorandum & Order #44278. The Opinion-Order of 4-19-76 is amended to incorporate the court's "opinion that such order involves a controlling question of law as to which there is substantial ground for difference of opinion & that an immediate appeal from the order may materially advance the ultimate termination of the litigation". . . . FRANKEL, J. m/n
5-27-76	Filed defts undertaking for costs on appeal—Bond #8070-9—07, in the am't of $250—Federal Insurance Co.
5-25-76	Filed True Copy of Order from the USCA that motion made by counsel for the petitioner dtd 4-30-76 for leave to appeal pursuant to 28 U.S.C. § 1292(b) is granted. . . . Clerk. n/m
6-29-76	Filed stipulation and order permitting a partial record to be transmitted to U.S.C.A.

Complaint.

UNITED STATES DISTRICT COURT

DISTRICT OF NEW JERSEY

75 Civ. 801

RUTH ANN REED, as Administratrix of the Estate of DAN WILLIAM REED, deceased, and as parent, natural guardian and best friend of CYNTHIA ANN REED, DEBORA LYNN REED and JULIE MARIE REED, all infants,

and

GILY EPSTEIN BARD, as Executrix of the Estate of SELDON R. BARD, deceased,

and

GILY EPSTEIN BARD, as Administratrix of the Estate of ETAN R. BARD, deceased,

and

JEAN F. GILDAY, Individually and as Executrix of the Estate of JOHN FRANCIS GILDAY, deceased, and MARY KATHRYN GILDAY SCHRODER, JOAN ALBERTINE GILDAY and JOHN FRANCIS GILDAY, II,

and

ROSE BAUM KRAUT and FIRST NATIONAL CITY BANK, as Co-Executors of the Estate of KATHERINE M. MICHEL, deceased,

and

ROSE BAUM KRAUT, as Administratrix of the Estate of JEREMIAH DAVID MICHEL, deceased,

and

JAMES K. ORPHAN, Individually and as Executor of the Estate of PAULA ORPHAN, deceased,

and

Complaint.

JAMES K. ORPHAN, Individually and as Administrator of the Estate of EMILY ORPHAN, deceased,

and

JAMES K. ORPHAN, Individually and as Administrator of the Estate of VASILIKI ORPHAN, deceased,

Plaintiffs,

against

FORWOOD CLOUD WISER, JR., and RICHARD E. NEUMAN,

Defendants.

Plaintiffs, by their attorneys, Kreindler & Kreindler, and William W. Lanigan, P.C., complaining of the defendants, respectfully allege:

A FIRST CLAIM FOR THE WRONGFUL DEATH AND SURVIVAL DAMAGES ARISING FROM THE DEATH OF DAN WILLIAM REED.

1. Jurisdiction exists pursuant to:

a) 28 U.S.C. § 1332 in that each plaintiff was and presently is and each of the decedents was at the time of their deaths citizens and residents of a State other than the State of New Jersey; the defendants are citizens and residents of the State of New Jersey; and the amount in controversy in each claim exceeds $10,000, exclusive of interest and costs;

b) 46 U.S.C. § 761 *et sec.* commonly known as the Death on the High Seas Act;

c) 28 U.S.C. § 1333; and

d) general maritime law.

2. On and prior to September 8, 1974, Trans World Airlines (hereinafter TWA) was a common carrier engaged in the business of transporting passengers for hire, in connection with which it owned, operated, maintained, and equipped a certain Boeing 707 aircraft bearing Registration Number N8734.

3. On September 8, 1974, the said TWA 707 aircraft crashed in the navigable waters of the Ionian Sea approximately 100 miles west of Araxos, Greece shortly after take off from Athens, Greece on a flight which originated at Tel Aviv, Israel and was enroute to John F. Kennedy Airport, New York.

4. At the time and prior to said crash, defendant Forwood Cloud Wiser, Jr. (hereinafter Wiser) was President and Chief Operating Officer of TWA and was responsible for the institution, operation and maintenance of a security system for the said aircraft sufficient to prevent weapons, explosive devices and other hazardous articles or material to be carried aboard the said aircraft by passengers or concealed within baggage or cargo placed within the said aircraft.

5. At the time and prior to said crash, defendant Richard E. Neuman (hereinafter Neuman) was Staff Vice-President Audit and Security of TWA and was responsible for the institution, operation and maintenance of a security system for the said aircraft sufficient to prevent weapons, explosive devices and other hazardous articles or material to be carried aboard the said aircraft by passengers or concealed within baggage or cargo placed within the said aircraft.

6. As a result of the negligence of defendants Wiser and Neuman in the institution, operation and maintenance of the security and anti-hijacking system of TWA a bomb

or other explosive device was permitted to be placed or carried aboard the said aircraft and exploded shortly after take-off causing the aircraft to crash into the Ionian Sea, thereby causing the death of all aboard.

7. The said crash caused the death of Dan William Reed who was a passenger for hire aboard said aircraft and died as a result of the crash.

8. During flight and prior to, at the time of and subsequent to impact, Dan William Reed suffered great phyical pain and mental anguish in contemplation of impending disaster and death.

9. Dan William Reed, deceased, was and is survived by his wife, plaintiff Ruth Ann Reed, and their three infant children, Cynthia Ann, Debora Lynn and Julie Marie, all of whom were dependent upon him for their support, care and guidance, and as a result of said crash they sustained damages including loss of support, services, consortium, paternal care and guidance, the prospect of inheritance of future accumulations, funeral and burial expenses, decedent's suffering and other fair and just damages.

10. Prior to the commencement of this action, plaintiff Ruth Ann Reed was duly and properly appointed Administratrix of the Estate of Dan William Reed and said plaintiff is duly qualified and presently acting in said capacity.

11. By reason of the premises, plaintiff Ruth Ann Reed, as Administratrix of the Estate of Dan William Reed, has been damaged in the sum of One Million Three Hundred Thousand ($1,300,000) Dollars for the wrongful death and Two Hundred Thousand ($200,000) Dollars for the conscious pain and suffering of the decedent.

A SECOND CLAIM FOR THE WRONGFUL DEATH AND SURVIVAL DAMAGES ARISING FROM THE DEATH OF SELDON R. BARD

12. Plaintiff repeats and realleges each and every allegation contained in paragraphs "1" through "6".

13. The said crash caused the death of Seldon R. Bard who was a passenger for hire aboard said aircraft and died as a result of the crash.

14. During flight and prior to, at the time of and subsequent to impact, Seldon R. Bard consciously suffered great physical pain and mental anguish in contemplation of impending disaster and death.

15. Seldon R. Bard was and is survived by his wife, plaintiff Gily Epstein Bard, and as a result of said crash and death she has sustained damages including loss of support, services, consortium, the prospect of inheritance of future accumulations, funeral and burial expenses, decedent's suffering and other fair and just damages.

16. Prior to the commencement of the within action, plaintiff Gily Epstein Bard was duly and properly appointed Executrix of the Estate of Seldon R. Bard, deceased, and said plaintiff is duly qualified and presently acting in said capacity.

17. By reason of the premises, plaintiff Gily Epstein Bard has been damaged in the sum of One Million Three Hundred Thousand ($1,300,000) Dollars for the wrongful death and Two Hundred Thousand ($200,000) Dollars for the conscious pain and suffering of the decedent.

A THIRD CLAIM FOR THE WRONGFUL DEATH AND SURVIVAL DAMAGES ARISING FROM THE DEATH OF ETAN R. BARD

18. Plaintiff repeats and realleges each and every allegation contained in paragraphs "1" through "6".

19. The said crash caused the death of Etan R. Bard who was a passenger for hire aboard said aircraft and died as a result of the crash.

20. During flight and prior to, at the time of and subsequent to impact, Etan R. Bard consciously suffered great physical pain and mental anguish in contemplation of impending disaster and death.

21. Etan R. Bard was and is survived by his mother, plaintiff Gily Epstein Bard, and as a result of said crash and death she has sustained damages including loss of support, services, the prospect of inheritance of future accummulations, funeral and burial expenses, decedent's suffering and other fair and just damages.

22. Prior to the commencement of the within action, plaintiff Gily Epstein Bard was duly and properly appointed Administratrix of the Estate of Etan R. Bard, deceased, and said plaintiff is duly qualified and presently acting in said capacity.

23. By reason of the premises, plaintiff Gily Epstein Bard has been damaged in the sum of Four Hundred Thousand ($400,000) Dollars for the wrongful death and Two Hundred Thousand ($200,000) Dollars for the conscious pain and suffering of the decedent.

A FOURTH CLAIM FOR THE WRONGFUL DEATH AND SURVIVAL DAMAGES ARISING FROM THE DEATH OF JOHN FRANCIS GILDAY

24. Plaintiff repeats and realleges each and every allegation contained in paragraphs "1" through "6".

25. Said crash caused the death of John Francis Gilday who was a passenger for hire aboard the said aircraft and died as a result of the crash.

26. During flight and prior to, at the time of and subsequent to impact, John Francis Gilday consciously suffered great physical pain and mental anguish in contemplation of impending disaster and death.

27. John Francis Gilday was and is survived by his wife, plaintiff Jean F. Gilday, his two daughters, Mary Kathryn Gilday Schroder and Jean Albertine Gilday and his son, John Francis Gilday, II, who as a result of said crash and death have sustained damages including loss of support, services, consortium, paternal care and guidance, the prospect of inheritance of future accumulations, funeral and burial expenses, decedent's suffering and other fair and just damages.

28. Prior to the commencement of the within action, plaintiff Jean F. Gilday was duly and properly appointed Executrix of the Estate of John Francis Gilday, deceased, and said plaintiff is duly qualified and presently acting in said capacity.

29. By reason of the premises, said plaintiff has been damaged in the sum of One Million ($1,000,000) Dollars

for the wrongful death and Two Hundred Thousand ($200,000) Dollars for the conscious pain and suffering of the decedent.

A FIFTH CLAIM FOR THE WRONGFUL DEATH AND SURVIVAL DAMAGES ARISING FROM THE DEATH OF KATHERINE M. MICHEL

30. Plaintiff repeats and realleges each and every allegation contained in paragraphs "1" through "6".

31. Said crash caused the death of Katherine M. Michel who was a passenger for hire aboard said aircraft and died as a result of the crash.

32. During flight and prior to, at the time of and subsequent to impact, Katherine M. Michel consciously suffered great physical pain and mental anguish in contemplation of impending disaster and death.

33. Katherine M. Michel was and is survived by her two minor sons, Bruce Peter and Ian James Michel who as a result of said crash and death have sustained damages including the loss of support, prospect of inheritance of future accumulations, funeral and burial expenses, decedent's suffering and other fair and just damages.

34. Prior to the commencement of the within action, plaintiffs Rose Baum Kraut and First National City Bank were duly and properly appointed Co-Executors of the Estate of Katherine M. Michel, deceased, and said plaintiffs are duly qualified and presently acting in said capacity.

35. By reason of the premises, plaintiffs Rose Baum Kraut and the First National City Bank have been dam-

aged in the sum of Eight Hundred Thousand ($800,000) Dollars for the wrongful death and Two Hundred Thousand ($200,000) Dollars for the conscious pain and suffering of the decedent.

A SIXTH CLAIM FOR THE WRONGFUL DEATH AND SURVIVAL DAMAGES ARISING FROM THE DEATH OF JEREMIAH DAVID MICHEL

36. The allegations of paragraphs "1" through "6" are repeated and realleged.

37. Said crash caused the death of Jeremiah David Michel who was a passenger for hire aboard said aircraft and died as a result of the crash.

38. During flight and prior to, at the time of and subsequent to impact, Jeremiah David Michel consciously suffered great physical pain and mental anguish in contemplation of impending disaster and death.

39. Jeremiah David Michel was and is survived by his two minor brothers, Ian James Michel and Bruce Peter Michel, who as a result of said crash and death suffered damages including damages for loss of support, services, the prospect of inheritance of future accumulations, funeral and burial expenses, fraternal care and guidance and other fair and just damages.

40. Prior to the commencement of the within action, plaintiff Rose Baum Kraut was duly and properly appointed Administratrix of the Estate of Jeremiah Michel and said plaintiff is duly qualified and presently acting in said capacity.

41. By reason of the premises, plaintiff Gily Epstein Bard has been damaged in the sum of Four Hundred

Thousand ($400,000) Dollars for the wrongful death and Two Hundred Thousand ($200,000) Dollars for the conscious pain and suffering of the decedent.

A SEVENTH CLAIM FOR THE WRONGFUL DEATH AND SURVIVAL DAMAGES ARISING FROM THE DEATH OF PAULA ORPHAN

42. The allegations in paragraphs "1" through "6" are repeated and realleged.

43. Said crash caused the death of Paula Orphan who was a passenger for hire aboard said aircraft and died as a result of the crash.

44. During flight and prior to, at the time of and subsequent to impact, Paula Orphan consciously suffered great physical pain and mental anguish in contemplation of impending disaster and death.

45. Paula Orphan was and is survived by her husband, plaintiff James K. Orphan, who as a result of said crash and death has sustained damages including loss of services, support, consortium, the prospect of inheritance of future accumulations, funeral and burial expenses, decedent's suffering and other fair and just damages.

46. Prior to the commencement of the within action, plaintiff James K. Orphan was duly and properly appointed Executor of the Estate of Paula Orphan, deceased, and said plaintiff is duly qualified and presently acting in said capacity.

47. By reason of the premises, said plaintiff is entitled to recover from defendants Eight Hundred Thousand ($800,000) Dollars for the wrongful death and Two Hun-

dred Thousand ($200,000) Dollars for the conscious pain and suffering of the decedent.

AN EIGHTH CLAIM FOR THE WRONGFUL DEATH AND SURVIVAL DAMAGES ARISING FROM THE DEATH OF VASILIKI ORPHAN

48. The allegations of paragraphs "1" through "6" are repeated and realleged.

49. Said crash caused the death of Vasiliki Orphan who was a passenger for hire aboard said aircraft, and died as a result of the crash.

50. During flight and prior to, at the time of and subsequent to impact, Vasiliki Orphan consciously suffered great physical pain and mental anguish in contemplation of impending disaster and death.

51. Vasiliki Orphan was and is survived by her father, plaintiff James K. Orphan, who as a result of said crash and death suffered damages including loss of support, services, the prospect of inheritance of future accumulations, funeral and burial expenses, decedent's suffering and other fair and just damages.

52. Prior to the commencement of the within action, plaintiff James K. Orphan was duly and properly appointed Administrator of the Estate of Vasiliki Orphan, deceased, and said plaintiff is duly qualified and presently acting in said capacity.

53. By reason of the premises, said plaintiff is entitled to recover from defendants Four Hundred Thousand ($400,000) Dollars for the wrongful death and Two Hundred Thousand ($200,000) Dollars for the conscious pain and suffering of decedent.

A NINTH CLIAM FOR THE WRONGFUL DEATH AND SURVIVAL DAMAGES ARISING FROM THE DEATH OF EMILY ORPHAN

54. The allegations of paragraphs "1" through "6" are repeated and realleged.

55. Said crash caused the death of Emily Orphan who was a passenger for hire aboard said aircraft and died as a result of the crash.

56. During flight and prior to, at the time of and subsequent to impact, Emily Orphan consciously suffered great physical pain and mental anguish in contemplation of impending disaster and death.

57. Emily Orphan was and is survived by her father, plaintiff James K. Orphan, who as a result of said crash and death has sustained damages including loss of support, services, the prospect of inheritance of future accumulations, funeral and burial expenses, decedent's suffering and other fair and just damages.

58. Prior to the commencement of the within action, plaintiff James K. Orphan was duly and properly appointed Administrator of the Estate of Emily Orphan, deceased, and said plaintiff is duly qualified and presently acting in said capacity.

59. By reason of the premises, said plaintiff is entitled to recover from defendants Four Hundred Thousand ($400,000) Dollars for the wrongful death and Two Hundred Thousand ($200,000) Dollars for the conscious pain and suffering of the decedent.

WHEREFORE, Plaintiff Ruth Ann Reed demands judgment against defendants in the First Claim on the sum of One

Million Five Hundred Thousand ($1,500,000) Dollars; plaintiff Gily Epstein Bard demands judgment against defendants on the Second Claim in the sum of One Million Five Hundred Thousand ($1,500,000) Dollars; plaintiff Gily Epstein Bard demands judgment against defendants on the Third Claim in the sum of Six Hundred Thousand ($600,000) Dollars; plaintiff Jean F. Gilday demands judgment against defendants on the Fourth Claim in the sum of One Million Two Hundred Thousand ($1,200,000) Dollars; plaintiffs Rose Baum Kraut and First National City Bank demand judgment against defendants on the Fifth Claim in the sum of One Million ($1,000,000) Dollars; plaintiff Rose Baum Kraut demands judgment against defendants on the Sixth Claim in the sum of Six Hundred Thousand ($600,000) Dollars; plaintiff James K. Orphan demands judgment against defendants on the Seventh Claim in the sum of One Million ($1,000,000) Dollars; plaintiff James K. Orphan demands judgment against defendants on the Eighth Claim in the sum of Six Hundred Thousand ($600,000) Dollars; plaintiff James K. Orphan demands judgment against defendants on the Ninth Claim in the sum of Six Hundred Thousand ($600,000) Dollars.

KREINDLER & KREINDLER

By STANLY J. LEVY
Stanley J. Levy
A Member of the Firm
Attorneys for Plaintiffs

WILLIAM W. LANIGAN, P.C.

By WILLIAM W. LANIGAN
William W. Lanigan
A Member of the Firm

Answer.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

The defendants, Forwood Cloud Wiser, Jr. (hereinafter referred to as Wiser) and Richard E. Neuman (hereinafter referred to as Neuman), by their attorneys Bigham Englar Jones & Houston, answering the complaint herein state:

AS TO THE FIRST CLAIM

FIRST: Deny each and every allegation contained in the paragraph of the Complaint designated "1" except admit that this court has jurisdiction over the within action pursuant to 46 U.S.C. section 761 et seq.

SECOND: Deny each and every allegation contained in the paragraphs of the complaint designated "2" except admit that on September 8, 1974 Trans World Airlines, Inc. (hereinafter referred to as TWA), was a duly certificated carrier by air of passengers and property for hire pursuant to the terms of a Certificate of Public Convenience and Necessity issued to it by the Civil Aeronautics Board and as such it operated and maintained a certain Boeing 707-331 B aircraft being registration N8734, in accordance with the rules, regulations, directives and instructions of the Civil Aeronautics Board and the Federal Aviation Administration and not otherwise.

THIRD: Deny each and every allegation contained in the paragraph of the complaint designated "4" except

admit that on September 8, 1974 Wiser was President and Chief Operating Officer of TWA and as such was generally responsible for the operation of the airline.

FOURTH: Deny each and every allegation contained in the paragraph of the complaint designated "5" except admit that on September 8, 1974 Neuman was Staff Vice President—Audit and Security for TWA and as such was generally responsible for audit control and security for the airline.

FIFTH: Deny each and every allegation contained in the paragraphs of the complaint designated "6", "8" and "11".

SIXTH: Deny each and every allegation contained in the paragraph of the complaint designated "7" except admit that on September 8, 1974 an individual giving the name Dr. Daniel Reed, after paying the appropriate fare, became a passenger onboard TWA Flight 841 which crashed in the Ionian Sea beyond a marine league from the shore of any state or of the District of Columbia or the territories or dependancies of the United States, after take-off from Athens, Greece, instantly killing all persons onboard.

SEVENTH: Deny that they have any knowledge or information sufficient to form a belief as to any of the allegations contained in the paragraphs of the complaint designated "9" and "10".

AS TO THE SECOND CLAIM

EIGHTH: Repeat and reiterate each and every of the foregoing admissions and denials made to the paragraphs of the complaint referred to in the paragraph designated

"12" thereof with the same force and effect as if set forth herein at length.

NINTH: Deny each and every allegation contained in the paragraph of the complaint designated "13" except admit that on September 8, 1974 an individual giving the name Mr. S. Bard, after paying the appropriate fare, became a passenger onboard TWA Flight 841 which crashed in the Ionian Sea beyond a marine league from the shore of any state or of the District of Columbia or the territories or dependancies of the United States, after take-off from Athens, Greece, instantly killing all persons onboard.

TENTH: Deny each and every allegation contained in the paragraphs of the complaint designated "14" and "17".

ELEVENTH: Deny that they have any knowledge or information sufficient to form a belief as to any of the allegations contained in the paragraphs of the complaint designated "15" and "16".

AS TO THE THIRD CLAIM

TWELFTH: Repeat and reiterate each and every of the foregoing admissions and denials made to the paragraphs of the complaint referred to in the paragraph designated "18" thereof with the same force and effect as if set forth herein at length.

THIRTEENTH: Deny each and every allegation contained in the paragraph of the complaint designated "19" except admit that on September 8, 1974 an individual giving the name of Mr. E. Bard, after paying the appropriate fare, became a passenger onboard TWA Flight 841 which crashed in the Ionian Sea beyond a marine league from

the shore of any state or of the District of Columbia or the territories or dependancies of the United States, after take-off from Athens, Greece, instantly killing all persons onboard.

FOURTEENTH: Deny each and every allegation contained in the paragraphs of the complaint designated "20" and "23".

FIFTEENTH: Deny that they have any knowledge or information sufficient to form a belief as to any of the allegations contained in the paragraphs of the complaint designated "21" and "22".

AS TO THE FOURTH CLAIM

SIXTEENTH: Repeat and reiterate each and every of the foregoing admissions and denials made to the paragraphs of the complaint referred to in the paragraph designated "24" thereof with the same force and effect as if set forth herein at length.

SEVENTEENTH: Deny each and every allegation contained in the paragraph of the complaint designated "25" except admit that on September 8, 1974 an individual giving the name of Mr. John Gilday, after paying the appropriate fare, became a passenger onboard TWA Flight 841 which crashed in the Ionian Sea beyond a marine league from the shore of any state or of the District of Columbia or the territories or dependancies of the United States, after take-off from Athens, Greece, instantly killing all persons onboard.

EIGHTEENTH: Deny each and every allegation contained in the paragraphs of the complaint designated "26" and "29".

Answer.

NINTEENTH: Deny that they have any knowledge or information sufficient to form a belief as to any of the allegations contained in the paragraphs of the complaint designated "27" and "28".

AS TO THE FIFTH CLAIM

TWENTIETH: Repeat and reiterate each and every of the foregoing admissions and denials made to the paragraphs of the complaint referred to in the paragraph designated "30" thereof with the same force and effect as if set forth herein at length.

TWENTY-FIRST: Deny each and every allegation contained in the paragraph of the complaint designated "31" except admit that on September 8, 1974 an individual giving the name Mrs. K. Michel, after paying the appropriate fare, became a passenger onboard TWA Flight 841 which crashed in the Ionian Sea beyond a marine league from the shore of any state or of the District of Columbia or the territories or dependancies of the United States, after take-off from Athens, Greece, instantly killing all persons onboard.

TWENTY-SECOND: Deny each and every allegation contained in the paragraphs of the complaint designated "32" and "35".

TWENTY-THIRD: Deny that they have any knowledge or information sufficient to form a belief as to any of the allegations contained in the paragraphs of the complaint designated "33" and "34".

Answer.

AS TO THE SIXTH CLAIM

TWENTY-FOURTH: Repeat and reiterate each and every of the foregoing admissions and denials made to the paragraphs of the complaint referred to in the paragraph designated "36" thereof with the same force and effect as if set forth herein at length.

TWENTY-FIFTH: Deny each and every allegation contained in the paragraph of the complaint designated "37" except admit that on September 8, 1974 an individual giving the name of J. Michel, after paying the appropriate fare, became a passenger onboard TWA Flight 841 which crashed in the Ionian Sea beyond a marine league from the shore of any state or of the District of Columbia or the territories or dependancies of the United States, after take-off from Athens, Greece, instantly killing all persons onboard.

TWENTY-SIXTH: Deny each and every allegation contained in the paragraphs of the complaint designated "38" and "41".

TWENTY-SEVENTH: Deny that they have any knowledge or information sufficient to form a belief as to any of the allegation contained in the paragraphs of the complaint designated "39" and "40".

AS TO THE SEVENTH CLAIM

TWENTY-EIGHTH: Repeat and reiterate each and every of the foregoing admissions and denials made to the paragraphs of the complaint referred to in the paragraph designated "42" thereof with the same force and effect as if set forth herein at length.

Answer.

TWENTY-NINTH: Deny each and every allegation contained in the paragraph of the complaint designated "43" except admit that on September 8, 1974 an individual giving the name of K. Orphan, after paying the appropriate fare, became a passenger onboard TWA Flight 841 which crashed in the Ionian Sea beyond a marine league from the shore of any state or the District of Columbia or the territories or dependancies of the United States, after take-off from Athens, Greece, instantly killing all persons onboard.

THIRTIETH: Deny each and every allegation contained in the paragraphs of the complaint designated "44" and "47".

THIRTY-FIRST: Deny that they have any knowledge or information sufficient to form a belief as to any of the allegations contained in the paragraphs of the complaint designated "45" and "46".

AS TO THE EIGHTH CLAIM

THIRTY-SECOND: Repeat and reiterate each and every of the foregoing admissions and denials made to the paragraphs of the complaint referred to in the paragraph designated "48" thereof with the same force and effect as if set forth herein at length.

THIRTY-THIRD: Deny each and every allegation contained in the paragraph of the complaint designated "49" except admit that on September 8, 1974 an individual giving the name of T. Orphan, after paying the appropriate fare, became a passenger onboard TWA Flight 841 which crashed in the Ionian Sea beyond a marine league from the shore of any state or of the District of Columbia or

the territories or dependancies of the United States, after take-off from Athens, Greece, instantly killing all persons onboard.

THIRTY-FOURTH: Deny each and every allegation contained in the paragraphs of the complaint designated "50" and "53".

THIRTY-FIFTH: Deny that they have any knowledge or information sufficient to form a belief as to any of the allegations contained in the paragraphs of the complaint designated "51" and "52".

AS TO THE NINTH CLAIM

THIRTY-SIXTH: Repeat and reiterate each and every of the foregoing admissions and denials made to the paragraphs of the complaint referred to in the paragraph designated "54" thereof with the same force and effect as if set forth herein at length.

THIRTY-SEVENTH: Deny each and every allegation contained in the paragraph of the complaint designated "55" except admit that on September 8, 1974 an individual giving the name of E. Orphan, after paying the appropriate fare, became a passenger onboard TWA Flight 84. which crashed in the Ionian Sea beyond a marine league from the shore of any state or of the District of Columbia or the territories or dependancies of the United States, after take-off from Athens, Greece, instantly killing all persons onboard.

THIRTY-EIGHTH: Deny each and every allegation contained in the paragraphs of the complaint designated "56" nad "59".

Answer.

THIRTY-NINTH: Deny that they have any knowledge or information sufficient to form a belief as to any of the allegations contained in the paragraphs of the complaint designated "57" and "58".

AS AND FOR A FIRST DEFENSE

FORTIETH: That each decedent in this action upon accepting passage on the flight referred to in the complaint knew the hazards and dangers thereof and the inherent risk to such flight and whatever damage or injuries were sustained by the decedents and the plaintiffs as alleged by the complaint herein arose from and were caused by such risks which were accepted and assumed by the decedents.

AS AND FOR A SECOND DEFENSE

FORTY-FIRST: That prior to September 8, 1974 a ticket was purchased for and a contract entered into with Dr. Dan Reed for round trip international air transportation between Dayton, Ohio and Tel Aviv, Israel with agreed stopping places including New York, New York, Athens, Greece, Rome, Italy and Lisbon, Portugal; that a ticket was purchased for and a contract entered into with E. Orphan for round trip international air transportation between St. Louis, Missouri and Athens, Greece with an agreed stopping place in New York, New York; that a ticket was purchased for and a contract entered into with K. Orphan for round trip international air transportation between St. Louis, Missouri and Athens, Greece with an agreed stopping place in New York, New York; that a ticket was purchased for and a contract entered into with T. Orphan for round trip international air transportation between St. Louis, Missouri and Athens, Greece with an agreed stopping place in New York, New York; that a ticket was purchased for and a contract entered into with E. Bard for round trip international air transportation

between New York, New York and Tel Aviv, Israel with agreed stopping places including Amsterdam, Netherlands, Bengazi, Libya and Rome, Italy; that a ticket was purchased for and a contract entered into with S. Bard for round trip international air transportation between New York, New York and Tel Aviv, Israel with agreed stopping places including Amsterdam, Netherlands, Bengazi, Libya and Rome, Italy; that a ticket was purchased for and a contract entered into with Mr. John Gilday for round trip international air transportation between Dallas, Texas and Tel Aviv, Israel with an agreed stopping place including New York, New York; that a ticket was purchased for and a contract entered into with Mrs. K. Michel for round trip international air transportation between New York, New York and Tel Aviv, Israel; that a ticket was purchased for and a contract entered into with J. Michel for round trip international air transportation between New York, New York and Tel Aviv, Israel.

FORTY-SECOND: That at the times of the said ticket purchases and contracts there was in force and effect a certain treaty, The Convention for the Unification of Certain Rules Relating to International Transportation By Air, known as the Warsaw Convention, 49 Stat. 3000, which was amended by the Protocol to Amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air, known as the Hague Protocol and an Agreement relating to Liability Limitation of the Warsaw Convention and the Hague Protocol, known as the Montreal Agreement, Civil Aeronautics Bureau 18990, approved by order E-23680, May 13, 1966, as well as, certain International Passenger Rules Tariffs all of which governed and controlled the rights and obligations of the plaintiffs, the decedents, and the defendants.

FORTY-THIRD: That prior to the times referred to in the complaint certain air carriers including TWA entered into

a written agreement with the Civil Aeronautics Board of the United States known as the Montreal Agreement which modified certain provisions of the Warsaw Convention relating to liability and provided among other things that the said limits of liability for death of each passenger shall be limited to a maximum $75,000.00.

FORTY-FOURTH: That notice of the limitation was duly published and posted in TWA's International Passenger Rules Tariffs and appropriate notice was also presented to each of the plaintiffs' decedents pursuant to the terms and conditions of the Montreal Agreement.

FORTY-FIFTH: That by reason of the foregoing defendants' liability, if any, is limited to a maximum total sum of $75,000.00 per passenger.

AS AND FOR A THIRD DEFENSE

FORTY-SIXTH: That if the plaintiffs and their decedents' sustained any illness and/or injuries or were otherwise damaged as alleged in the complaint said illness and/or injuries and/or damages were caused in whole or in part by the negligence and/or deliberate acts of others over which defendants had no control and were not caused or contributed to in any manner by the negligence of the defendants.

WHEREFORE, defendants demand judgment dismissing the Complaint together with the costs, disbursements and attorneys fees therein and, in the alternative, that their liability be limited to the actual damage sustained but in no event to exceed $75,000.00 for each decedent.

BIGHAM ENGLAR JONES & HOUSTON
Attorneys for Defendants

By JOHN J. MARTIN
John J. Martin

Plaintiffs' Notice of Motion.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

SIRS:

PLEASE TAKE NOTICE that upon the annexed affidavit of Stanley J. Levy, sworn to the 23rd day of September, 1975 and upon all prior pleadings and proceedings had herein, the undersigned will move this Court before the Honorable Marvin E. Frankel in the United States Courthouse, Foley Square, New York, New York, on the 8th day of October, 1975 for an Order, pursuant to Rule 12(f) of the Federal Rules of Civil Procedure, striking The Second Affirmative Defense set forth in defendants' Answer or, alternatively, for Partial Summary Judgment in plaintiffs' favor with respect to The Second Affirmative Defense of defendants' Answer pursuant to Rule 56 of the Federal Rules of Civil Procedure.

Dated: New York, New York
September 23rd, 1975

Yours, etc.,

KREINDLER & KREINDLER

By: STANLEY J. LEVY
A Member of the Firm
Attorneys for the Plaintiffs

To: BIGHAM, ENGLAR, JONES & HOUSTON, Esqs.
Attorneys for the Defendants

Affidavit of Stanley J. Levy, in Support of Motion.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

AFFIDAVIT IN SUPPORT OF PLAINTIFFS' MOTION TO STRIKE CERTAIN DEFENSES OR ALTERNATIVELY FOR PARTIAL SUMMARY JUDGMENT.

STATE OF NEW YORK
COUNTY OF NEW YORK } ss.:

STANLEY J. LEVY, being duly sworn, deposes and says:

1. I am a member of the firm of Kreindler & Kreindler, attorneys for the plaintiffs, and I am fully familiar with the facts and circumstances of the subject action.

This affidavit is respectfully submitted in support of plaintiffs' motion to strike The Second Affirmative Defense of defendants' Answer or, alternatively, for Partial Summary Judgment in plaintiffs' favor.

2. Plaintiffs' motion should be granted for the following reasons:

(a) At common law, a negligent employee of a corporation is personally liable for injuries caused by his negligent acts independent of the corporation's liability.

(b) The Warsaw Convention, which defendants rely on to limit their liability, is inapplicable because the treaty limited only the damages recoverable from airlines, but did not apply to or in any way limit the damages recoverable from employees of the airline.

(c) The Hague Protocol which involved an attempt to extend the damage limitation which the Warsaw Convention granted to airlines to the employees of the airlines was specifically rejected when the United States refused to ratify the Hague Protocol and is not in force in this county.

3. This action arises from the crash of a Trans World Airlines [hereinafter TWA] Boeing 707 aircraft in the Ionian Sea approximately 100 miles west of Araxos, Greece on September 8, 1974 [Answer ¶ 6; Complaint ¶ 3]. The said aircraft, operated by TWA as Flight 841, which began its flight in Tel Aviv, Israel, took off from Athens, Greece and was bound for John F. Kennedy International Airport in New York City [Answer ¶ 6; Complaint ¶¶ 2 & 3]. All of the 79 passengers and 9 crewmembers aboard the aircraft died as a result of the crash [Answer ¶ 6]. Plaintiffs in the within action are the personal representatives, heirs and next-of-kin of 9 of the passengers who died in the crash.

4. Defendants Forwood Cloud Wiser, Jr. and Richard E. Neuman at and prior to the time of crash were President and Chief Operating Officer of TWA and Staff Vice-President Audit and Security of TWA, respectively [Answer ¶¶ 3 & 4].

5. The action was originally commenced in the United States District Court for the District of New Jersey by the filing of the Summons and Complaint, together with a Notice for Production of Documents. New Jersey was selected as the forum because it is the residence of both defendants. The defendants, however, moved to transfer the action to this Court pursuant to 28 U.S.C. § 1404(a). The plaintiffs did not oppose the motion and the case was transferred to this Court. Thereafter the defendants served their Answer on September 5, 1975.

6. Plaintiffs allege that the detonation of an explosive device aboard the aircraft led to the fatal crash which occurred shortly after takeoff from Athens, Greece. Plaintiffs further allege that defendants Wiser and Neuman in their respective capacities were responsible for the institution, operation and maintenance of a security system for the said aircraft sufficient to prevent weapons, explosive devices and other hazardous articles or material from being carried aboard the aircraft by passengers or concealed within baggage or in cargo placed within the aircraft and the defendants' negligent failure to do so was the cause of the deaths of those killed in the crash [Complaint ¶¶ 4, 5 & 6].

7. A negligent employee of a corporation is liable for damages caused by his negligence entirely apart from and independent of the corporation. At common law, defendants Wiser and Neuman would be liable for their negligence in contributing to the deaths of the decedents.

8. In their Answer, defendants asserted, as their Second Affirmative Defense in ¶¶ forty-first through forty-fifth, that damages are limited to $75,000 for each decedent under the terms of the Warsaw Convention, a multilateral treaty to establish certain rules relating to international transportation by air as supplemented by the Montreal Agreement in which the carrier agreed to increase the damage limitation from $9,000 to $75,000.

9. As appear more fully in plaintiffs' accompanying Memorandum of Law and to which the plaintiffs respectfully refer, the defenses available to the airline under the terms of the Warsaw Convention treaty are not available to that airline's employees.

10. It was held in *Pierre* v. *Eastern Airlines, Inc.*, 152 F.Supp. 486 (D.N.J. 1957), a case precisely in point, that the Warsaw Convention applies to the carrier only and

did not limit the damages which could be recovered from agents or employees of the airline.

11. A number of respected air law authorities agree with the holding in *Pierre* that the limitation of liability provisions applicable to airlines pursuant to the Warsaw Convention do not extend to airline employees.

12. The only opinion contrary to *Pierre* which discusses and analyzes whether the liability limitation of the Warsaw Convention extends to an airline's employees is *Chutter* v. *KLM,* 132 F.Supp. 611 (S.D.N.Y. 1953). *Chutter* relied primarily on an analogy drawn between the Warsaw Convention and the Carriage of Goods by Sea Act as construed in two opinions which were subsequently reversed by the Supreme Court in *Robert C. Herd & Co.* v. *Krawill Machinery Corp.,* 359 U.S. 297 (1959).

13. The purpose of the Hague Protocol which was discussed in *Pierre* was to amend and extend the Warsaw Convention. One of the specific goals of the Hague Convention was to extend the Warsaw Convention's limitation to employees of the airlines since their non-coverage was recognized. The Protocol contained a specific provision to accomplish this extension. However, the United States rejected Hague and has refused to ratify or adhere to the Hague Protocol and it is, therefore, without effect in the United States.

14. The language of the Warsaw Convention makes clear that the Warsaw Convention was never intended to apply to airline employees. This is indicated by specific references in certain articles of the Convention to airline employees but no reference to such employees in those articles which create and impose liability limitations. Furthermore, the history of the Warsaw Convention and the Minutes of the Warsaw Conference itself reveal that it was never the intent of the delegates to the Conference

to abrogate the common law liability of airline employees for damages arising from their negligence.

15. As a treaty, the Warsaw Convention must be strictly construed and neither altered, amended nor added to in the course of its construction.

16. The Warsaw Convention as an instrument in derogation of the common law must be strictly construed and its provisions extended no farther than was the intent of its drafters.

WHEREFORE, your deponent respectfully requests that the plaintiffs' motion should be granted striking The Second Affirmative Defense asserted in defendants' Answer or in the alternative for partial summary judgment in plaintiffs' favor with respect to such Affirmative Defense.

Dated: New York, New York
September 23, 1975

STANLEY J. LEVY
STANLEY J. LEVY

(Sworn to September 23, 1975)

Complaint Annexed to Affidavit of Stanley J. Levy.

Identical to Complaint printed herein at pages A5 to A17.

Answer Annexed to Affidavit of Stanley J. Levy.

Identical to Answer printed herein at pages A18 to A28.

A- 35

EXHIBIT A--SCARF V. T.W.A. OPINION ANNEXED TO PLAINTIFFS' SUPPORTING MEMORANDUM OF LAW

BEST COPY AVAILABLE

SCARF v. TRANS WORLD AIRLINES, INC. ET AL.

United States District Court, Southern District of New York, September 2, 1955.

(For opinion in related proceedings, see 4 Avi. 17,828.)

WARSAW CONVENTION—PLACE OF SUIT—APPLICABILITY TO DAMAGES CAUSED BY EMPLOYEES NOT CONNECTED WITH PLAINTIFF'S FLIGHT.—The Warsaw Convention makes an air carrier liable for injuries to passengers, and actions for damages "however founded" can be brought only subject to the conditions and limitations set out in the Convention. Therefore, an action for injuries incurred when another airplane of the air carrier passed close to the airplane which the plaintiff was boarding and by its propeller blast moved the ramp which plaintiff was mounting is subject to the conditions of the Convention as to where suit may be brought. The fact that the passenger's complaint is based not on the air carrier's failure to perform its duty to him as a passenger but the commission of a negligent act which would be actionable without relation to his status as a passenger does not remove the action from the conditions of the Convention.

Gair & Gair, 84 William Street, New York, New York, for Plaintiff.

Reilly & Reilly, 233 Broadway, New York, New York (Harold V. McCoy, of Counsel), for Defendant Trans World Airlines, Inc.

WALSH, D. J.: Defendant, Trans World Airlines, Inc., has moved to dismiss the complaint because of lack of proper venue. Its motion is granted.

Plaintiff seeks damages for personal injuries suffered while boarding a plane of T. W. A., at Gander, Newfoundland. He was in transit from Sydney, Australia to Madrid, Spain. As he was reboarding his plane, another plane of T. W. A. passed close by and its propeller blast moved the ramp which plaintiff was mounting, causing his injury.

[*Warsaw Convention—Venue*]

The Warsaw Convention permits an action for damages against a carrier to be brought only in one of four places: the domicile of the carrier, its principal place of business, its place of business through which the contract was made or the place of destination. (Article 28). It is conceded that this district is not one of the places specified.

[*Applicability of Warsaw Convention*]

Plaintiff contends, however, that his suit is not affected by the Warsaw Convention because the negligence of defendant T. W. A. was manifested in the navigation of a plane other than that in which plaintiff was a passenger. He argues that if a different airline had been operating the offending plane he could sue unimpeded by the Warsaw Convention, and that therefore, he is not restrained by the Convention when he sues his carrier if the gravamen of his complaint is not defendant's failure to perform its duty to him as a passenger but the commission of a negligent act which would be actionable without relation to his status as passenger. Plaintiff concedes he has no authority to support his contention.

Although the Convention does not affect the liability of persons other than plaintiff's own carrier, its limitations extend broadly to claims of damage by plaintiff against his carrier without regard to whether they are based upon the conduct of the plane and employees serving plaintiff himself or those otherwise employed. The Convention relieved the carrier from liability under pre-existing law and substituted a new liability with express limitations as to amount and method of recovery. The carrier is made liable for injury suffered by the passenger

> "if the accident which caused the damage * * * took place on board the aircraft or in the course of any of the operations of embarking or disembarking." (Article 17).

With certain exceptions not here relevant, such an action for damages "however founded," can only be brought subject to the conditions and limitations set out in this Convention. (Article 24). The conditions applicable include the restriction in place of suit.

The broad language "however founded" embraces the damages during embarkation caused by the operations of the carrier and includes damages caused by employees not directly connected with plaintiff's flight. The Convention shows no intent

A 36

Exhibit A Annexed to Plaintiffs' Supporting Memorandum of Law

to preserve pre-existing liability by the carrier to the passenger for any personal injury sustained on its plane or while embarking for disembarking. Treaties should be construed liberally to accomplish their purposes. *Bacardi Corp. v. Domenech*, 311 U. S. 150, 163 (1940); *Asakura v. Seattle*, 265 U. S. 332, 342 (1923).

The anomaly that plaintiff would not have been impeded in his suit if the offending plane were operated by a person other than the carrier serving plaintiff has its counterpart under other laws. For example, a longshoreman covered by workman's compensation injured by the negligence of the ship's crew may recover in a third party proceeding against the steamship company if his employer is an independent contractor but not if he is employed directly by the steamship company.

Defendant's motion to dismiss is granted. Settle order on notice.

ROSE v. PETERS ET AL.

Florida Supreme Court, September 14, 1955.

REPAIR OF AIRPORT HANGAR—LIABILITY FOR DEATH OF EMPLOYEE OF CONTRACTOR.—The operator of an airport and the occupant of a hangar at the airport are not liable for the death of the vice president of a roofing company which had contracted to repair the roof of the hangar. The argument that his death, which occurred when he fell through the roof, was met in an attempt to rescue his men who were placed in a position of great peril due to the negligence of the defendants does not stand because (1) he was aware of the dangerous condition of the roof but did not warn his men, (2) there is no showing of negligence on the part of the defendants, and (3) the defects in the roof were obvious and not concealed.

Irving Cypen, L. J. Cushman, and Michael H. Salmon, for Appellant.

Dixon, DeJarnette, Bradford & Williams, Charles A. Kimbrell and Douglas M. Carlton, for Appellee Dade County Port Authority; Arthur S. Clark, Jr., for Appellee Aerodex, Inc.

TERRELL, J.: Dade County Port Authority engaged Guaranty Roofing Company, hereinafter referred to as "Roofing Company," to make repairs on Miami International Airport upon a cost plus contract, the Roofing Company to furnish materials and equipment. October 19, 1950, the roofing crew under supervision of Mr. Czepiel was directed to Hangar No. 2 which was occupied by Aerodex, Inc., to begin the repairs. The dangerous condition of the roof was pointed out to Mr. Czepiel who was an experienced roof mechanic and fully explained to him. He instructed the crew as to the dangerous condition of the roof and ordered them on it to begin repairs. Soon after the crew commenced work, Mr. Alex J. Rose, vice president of the Roofing Company and an experienced engineer, climbed the ladder where the crew was working. Mr. Czepiel was working near him and told him of the dangerous condition of the roof and warned him to walk upon a rafter which was pointed out to him. He had previously been given knowledge of the dangerous condition of the roof. He took a few steps on the rafter, as he was instructed to do, but accidentally missed it and fell through the roof to the cement floor and was killed instantly.

This action was brought by Bertha Rose, widow of Alex J. Rose, to recover damages for his death. The complaint is grounded on the theory that deceased met death in an attempt to rescue his men who were placed in a position of great danger and peril due to the negligence of defendants. Answers to the complaint denied all allegations of negligence and proffered pleas of contributory negligence on the part of decedent. The case came on for trial before a jury but at the close of plaintiff's case, the court granted motions for directed verdict in favor of both defendants. A new trial was denied and the plaintiff appealed.

[*"Rescue doctrine"*]

Several questions are urged for determination, but the real issue in the case is whether or not what is known as the "rescue doctrine," relied on by appellant, is applicable to this case.

It is true that the "rescue doctrine" may be invoked in a personal injury action to offset contributory negligence provided the

EXHIBIT B--SCARF V. T.W.A. SECOND OPINION ANNEXED TO PLAINTIFFS' SUPPORTING MEMORANDUM OF LAW

SCARF v. TRANS WORLD AIRLINES, INC. ET AL.

United States District Court, Southern District of New York, October 27, 1955.

(For opinion of this court in related proceedings, see 4 Avi. 17,795.)

WARSAW CONVENTION—VENUE—SEPARATE CLAIMS AGAINST AIR CARRIER AND SERVICE CORPORATION.—A motion by an aviation service corporation for dismissal of a negligence complaint against it on the grounds that a complaint against an air carrier in the same action was dismissed for want of proper venue under the Warsaw Convention was dismissed. The complaint alleges a separate claim for negligence against the service corporation, and the tort sued on is not the carrier's tort.

Gair and Gair (Benjamin H. Siff, of counsel), 84 William Street, New York, New York, for Plaintiff.

Mendes & Mount, 27 William Street, New York, New York, for Defendant Allied Aviation Service Corp. of Newfoundland, Ltd.

CLANCY, D. J.: The complaint in this action states claims of negligence against both defendants, the carrier and the service corporation that maintained the ramp in mounting which the plaintiff was injured. The only negligence asserted against the carrier was its permitting one of its planes to move in dangerous proximity to the plane which the plaintiff was boarding. The service corporation was charged with negligence in failing to have the embarking platform properly and safely affixed to the plane.

On motion, the carrier corporation procured an order dismissing the complaint as against it for want of proper venue under the terms of the Warsaw Convention. This motion to dismiss against the service corporation is made on the ground that the Court lacks jurisdiction over the subject matter of the litigation, on the theory that a dismissal of the action against the carrier for want of venue under the Warsaw Convention requires a dismissal against the service corporation for the same reason. The failure to assert other grounds

for the motion indicates that the venue is proper unless the treaty controls.

The complaint clearly alleges a separate claim for negligence against Allied Aviation Service Corporation. Whether the failure to affix the landing ramp to the aircraft be considered malfeasance or nonfeasance, a claim good in law is stated in the complaint against the service corporation. *Restatement of the Law of Agency*, 354(a), (c) and (d); 3 *C. J. S., Agency*, §§ 220 through 223. The tort sued on is not the carrier's tort. The *Chutter* case, to which the service corporation refers, we understand to have been decided as presenting an issue of fact. No question of venue was raised or decided and the negligence attributed to the carrier was that of a principal for the negligence of the service corporation as its agent.

Motion denied.

EXHIBIT C--HOFFMAN V. B.O.A.C. OPINION ANNEXED TO PLAINTIFFS' SUPPORTING MEMORANDUM OF LAW

HOFFMAN v. BRITISH OVERSEAS AIRWAYS CORP.

New York Supreme Court, New York County, September 16, 1964.

WARSAW CONVENTION—DAMAGE ACTION—FORUM LIMITATIONS—AVAILABILITY.—The four damage action forums delineated in Article 28 of the Warsaw Convention under which a passenger may bring an action against an air carrier are confined to the parties of the ticket contract. Therefore, in an action to recover for injuries received when descending the portable stairway from an international flight, the limitations of the Convention are not available to the company which provided the stairway.

Back reference: ¶ 17,303.837.

James T. Bredin, 60 E. 42nd Street, New York, New York, for Plaintiff.

Condon & Forsyth, 1 Rockefeller Plaza, New York, New York, for Defendant.

Number 351—63
10-26-64

LUPIANO, Judge: Motion by plaintiff pursuant to CPLR, 3211(b) to dismiss defendant Allied Aviation Service International Corporation's separate defense in paragraph numbered 4, is denied to the extent below indicated and said defendant's cross motion to dismiss the complaint pursuant to rule 3211(a) of the CPLR is denied.

[*Facts*]

Plaintiff-passenger instituted the present action to recover for injuries incurred when descending the portable stairway, owned and operated by defendant Allied Aviation Service International Corp'n (hereinafter referred to as Allied Aviation) as she deplaned from the aircraft, owned and operated by codefendant British Overseas Airways Corporation (hereinafter referred to as BOAC). The plaintiff does not dispute that the transportation contracted for with defendant BOAC was "international transportation" within the Warsaw Convention (49 Stat. pt. 2, p. 3000, proclaimed October 29, 1934), nor that pursuant to Article 28 of the Warsaw Convention, only Paris, France or London, England qualifies as a proper forum for an action against BOAC (see *Ross v. Pan American Airways*, 299 N. Y. 300; *Garcia v. Pan American Airways*, 181 Misc. 963, affd. 267 App. Div. 947, affd. 293 N. Y. 878, certiorari denied 324 U. S. 882).

[*Warsaw Convention jurisdiction*]

Whether Allied Aviation, a New York corporation amenable to service in neither Paris, France nor London, England, absent submission thereto, by contract or otherwise, can claim the benefit of the forum limitations contained in Article 28 must now be determined. Of some significance, nowhere does Allied Aviation concede that it comes within the Warsaw Convention for purposes of jurisdiction by a French or English court. Examination of the papers submitted herein and of the pertinent provisions of the Warsaw Convention compels the conclusion that irrespective of whether the restrictions embodied in other provisions of the Warsaw Convention inure to the benefit of defendant Allied Aviation (see, for example, *Chutter v. KLM Royal Dutch Airlines* [4 Avi. 17,733], 132 F. Supp. 611), the prescriptions in Article 28 delineating the forum in which plaintiff-passenger may institute an action against the airline company must be confined to the parties to the contract. To interpret this provision otherwise would constitute an inordinate extension of language and would foreclose, as a pragmatic reality, the vindication of any rights which plaintiff might have against this defendant. Accordingly, in so far as the subject of the foregoing is encompassed by defendant Allied Aviation's defense to this action, said defense is thusly modified; plaintiff's motion to dismiss is granted to this extent and that portion of defendant's cross motion predicated thereon is denied.

[*Contributory negligence*]

In addition to the foregoing ground, defendant contends that the instant complaint is defective in that it admits contributory negligence and hence must be dismissed. A reading of the complaint and that part of plaintiff's deposition upon oral questions submitted by defendant to support its contention, compels the conclusion that defendant has not sustained the burden of demonstrating the alleged fatal defect so as to warrant a favorable determination at this posture of the action. Accordingly, defendant's motion to dismiss the complaint is in all respects denied. However, since the alleged defense comprehends contributory negligence, the defense may not be stricken.

A 39

EXHIBIT D--ARTICLE BY DR. OTTO RIESE ANNEXED TO PLAINTIFFS' SUPPORTING MEMORANDUM OF LAW

A I R L A W

The International Law on Civil Aviation

with Special Consideration for

Swiss Law

by

OTTO RIESE

Professor at the University of Lausanne

Former Member of the CITEJA

1949

K. F. KOEHLER VERLAG, STUTTGART

Par. 45 The Liability of the Air Carrier in the International Passenger and Freight Traffic

I. SCOPE; RELATING THE WARSAW CONVENTION TO OTHER LIABILITY GUIDELINES

The third chapter of the Warsaw Conventions govern the liability of the air carrier[1] arising from the transportation of passengers[2], baggage and freight. This regulation is exhaustive to the extent that the travelers and shippers derive no further claims against the air carrier from the circumstances stipulated in the Convention; in particular, such claims cannot be lodged against it (the air carrier) on the basis of a liability in tort or in contingency provided in a national law, not even with the argument that the air carrier is not being sued as such, but in his simultaneous capacity as aircraft owner. All this follows for Article 24 of the Warsaw Convention[3].

On the other hand, for infliction of damage by other persons, the assertion of a claim against a guilty party or a party liable to pay damages in accordance with national law is evidently not excluded by the Convention. However, the IATA (International Air Transport Association) terms of conveyance expressly exclude any simultaneous liability of the employees and servants of the air carrier.

Lemoine (No. 840-841) is of the opinion that the liability limitation of the Warsaw Convention (III4 below) would also be effective in favor of the personnel of the air carrier,

since their negligence is to be defended by it (the air carrier) as its own, and since it is untenable to exempt the air carrier from any liability for baggage and freight damages resulting from a navigation error committed by one of its personnel, but also by the carrier personally, and to let the employees be liable under national law, and without limitation at that.

As plausible as this postulate may appear, it does not find sufficient support in the Warsaw Convention, and even Lemoine's attempt at a justification appears unconvincing:

First, the applicability of the liability limitation cannot be separated from the applicability of the liability regulation of the Convention as a whole; if the liability regulation does not apply to the liability of the employees, then they cannot take recourse to the limitations contained therein.

In our opinion, there is no doubt that the Convention governs only the liability of the air carrier[5] ; this is clearly evident not from the title, but from the preamble and from the text of the liability regulations (Art. 17 cont.)

Accordingly, one would arrive at the conclusion that the liability of persons other than the air carrier provided by national law is not affected by the Convention, and consequently is in force alongside the Convention. Accordingly, this would apply in particular in the following two cases:

1. The personnel of the air carrier, in particular the pilot, could be sued by the injured parties on the basis of a liability in tort provided in the applicable national law, or a fine could be imposed in a criminal proceeding in indemnification of the civil law claims of the injured party [6]. Recourse to the liability limits of the Convention, as demanded by Lemoine, would be excluded. Whether the exoneration (nonliability) provided in the IATA terms of conveyance would be permissible and would be effective in favor of the employees would have to be decided in accordance with applicable national law.

2. If the owner of the transporting aircraft is not identical with the air carrier (say, when the air carrier has entered into a transportation agreement which is being performed by a third enterprise) [7], according to the Warsaw Convention the air carrier is liable; however, there arises the question whether independently of it (the air carrier) the owner of the transporting aircraft may be sued on the basis of a liability in contingency provided in national law. Here also the national law decides the effectiveness of the exoneration (nonliability) clause whose text also extends to the outside owner who is simultaneously the servant of the air carrier.

Another solution could be justified only if one would assume that because of submission to the provisions of the Convention, the assertion of claims other than those provided therein would be excluded by contract and also in favor of the personnel and servants of the air carrier [8]. We doubt,

however, that the courts will follow this bold interpretation.

II. PREREQUISITE FOR LIABILITY:

THE DAMAGES TO BE INDEMNIFIED

1. Personal Injuries to the Passengers

According to Art. 17 of the Warsaw Convention, the damage resulting from death, bodily injury and other health impairment of a passenger must be indemnified. (Regrading the extent of the liability to pay damages, see below III 6.)

By mentioning health impairment (a somewhat free translation of the French text where it is "lesion corporelle") alongside bodily injury ("blessure'), it was evidently the intention to clarify that any impairment of the physical or psychic well-being must also be included, which is not caused by a mechanical effect and does not result in an anatomic change in the body. According to Swiss legal theory [9] and jurisprudence, the term "bodily injury" by itself would have to be interpreted in this sense, while in German law this is usually defined by expressly mentioning "damage to health" (cf., e.g., LVG = Air Traffic Law Par. 19; BGB = German Civil Code Par. 823). [10] According to both Swiss and German law this includes damage to health caused by shock (fright) effect. Even air sickness caused by the rocking of the aircraft constitutes "damage to health."

However, a claim for damages exists only when death, bodily injury or damage to health was caused by accident and results in a damage.

ELIZABETH WANDERER AND HENRY WANDERER, *Plaintiffs*,

vs.

SOCIÉTÉ ANONYME BELGE D'EXPLOITATION DE LA NAVIGATION AÉRIENNE (SABENA), AND PAN AMERICAN AIRWAYS, INC., *Defendants*.

State of New York, Supreme Court, New York County, February 10, 1949.

Civil No. C015—1947.

Before: BENVENGA, J.

CARRIERS—262. Time for Suit—Under Warsaw Convention.

The Warsaw Convention two-year time limit for suit held to bar a suit after two years against Pan American Airways as agent at Gander Field for the air carrier Sabena, whose airplane crashed near Gander because of alleged negligence of the Pan American agent in giving instructions about landing conditions or use of an alternate airport.

AGENTS—CARRIERS—1231. Status of Carrier.

The Warsaw Convention where applicable, applies not only to the carrier, but to the agencies employed to perform the carriage (as: traffic control agency at an airport).

GUSTAVE G. ROSENBERG, *for Plaintiffs*.

HAIGHT, DEMING, GARDINER, POOR & HAVENS, of New York, *for Defendant, Pan American Airways, Inc.*

STATEMENT.

Plaintiff Elizabeth Wanderer and her husband, Henry Wanderer, sued to recover for injuries sustained by the plaintiff Elizabeth Wanderer, who was a passenger on board an aircraft owned by the defendant Sabena, which was involved in an accident near Gander, Newfoundland, on September 18, 1946. The injured plaintiff was a passenger enroute from Brussels, Belgium, to New York under a passage ticket issued by the defendant Sabena. In December, 1946, the plaintiffs instituted suit against Sabena as the sole defendant.

Thereafter on October 20, 1948, more than two years after the date of the accident, a supplemental summons and an amended complaint were served on the defendant Pan American Airways, Inc., naming said corporation as an additional defendant in the action. The amended complaint alleged that the defendant Pan American controlled the operations of the defendant Sabena at Gander Air-

field; that when the airplane crashed it was being controlled by both defendants, and the defendant Pan American was further charged with fault in failing to instruct the pilot to proceed to another airfield where weather conditions were more favorable than the conditions prevailing in Gander at the time of the accident.

The defendant Pan American moved to dismiss the amended complaint as against itself on the ground that the cause of action alleged therein did not accrue within the time for the commencement of suit as provided in Article 29 of the Warsaw Convention (U. S. Statutes-at-Large, Vol. 49, part 2, pages 3,000 *et seq.* 1934 U. S. Av. R. 245). Article 29 of the Convention provides as follows:

"(1) The right to damages shall be extinguished if an action is not brought within 2 years, reckoned from the date of arrival at the destination, or from the date on which the aircraft ought to have arrived, or from the date on which the transportation stopped.

(2) The method of calculating the period of limitation shall be determined by the law of the court to which the case is submitted."

The plaintiffs contended that the two-year limitation provided in Article 29 was inapplicable, first, because the defendant Pan American was not the carrier under the contract of transportation and, secondly, because the complaint alleged wilful misconduct which the plaintiffs claimed would, if proved, defeat the defendant's right to rely upon the two-year limitation in view of the provision of Article 25 of the Convention, reading as follows: "The carrier shall not be entitled to avail himself of the provisions of this convention which exclude or limit his liability, if the damage is caused by his wilful misconduct * * *."

BENTENGA, J.:

Motion is granted. The plaintiffs' cause of action is governed by the Warsaw Convention (*Garcia* vs. *Pan American Airways, Inc.*, 269 App. Div. 287, 1945 U. S. Av. R. 39; aff'd 295 N. Y. 852, 1946 U. S. Av. R. 497, cert. den., 329 U. S. 741, 1946 U. S. Av. R. 498). The failure of the plaintiffs to institute action against the defendant Pan American Airways, Inc., within the time there prescribed effectively extinguishes the plaintiffs' right against that defendant.

Settle order.

EXHIBIT F--DOCUMENTS OF THE INTERNATIONAL CONFERENCE ON PRIVATE AIR LAW, 2 I.C.A.O. DOC. NO. 7686-LC/140 (SELECTED PAGES) ANNEXED TO PLAINTIFFS' SUPPORTING MEMORANDUM OF LAW

12. REPORT ON

REVISION OF THE WARSAW CONVENTION

(Adopted by the Legal Committee of ICAO at Rio de Janeiro in September 1953)

I. HISTORICAL

1. Since 1935 the question of revising the Warsaw Convention of October 12, 1929, for the unification of certain rules relating to international carriage by air, has engaged the attention of jurists, particularly the Comité International Technique d'Experts Juridiques Aériens (CITEJA), and the International Air Traffic Association. After the second world war, the matter was taken up by the Provisional International Civil Aviation Organization which referred the subject to CITEJA for study. The CITEJA having been dissolved in 1947, the Legal Committee of ICAO undertook to continue the study of the subject. During the years 1948-1951, such study was further developed in the Legal Committee and several draft conventions were formulated by Major K.M. Beaumont, Rapporteur, as a result of discussions in the Committee. These drafts, as well as relevant questionnaires were transmitted to all Contracting States and other interested governments and international organizations. In January 1952, a special sub-committee appointed by the Legal Committee prepared at Paris a complete draft convention to replace the Warsaw Convention. The draft was submitted to the Legal Committee at its Ninth Session.

II. ACTION TAKEN BY THE LEGAL COMMITTEE AT ITS NINTH SESSION

2. At its initial meeting the Committee considered and discussed the general question as to the desirability of revising the Warsaw Convention and, if such revision was thought desirable, the extent and scope of such revision. It was generally, though not unanimously, agreed that some modifications should be made to the Warsaw Convention in the light of practical difficulties experienced in the application of certain provisions of the Convention and also to remove certain other difficulties of a legal nature. The majority of the Committee, however, was of the opinion that, having regard to the widespread acceptance of the Warsaw Convention among Contracting and other States, it would not be expedient to replace it by an entirely new one the ratification of which might involve considerable delay; and that, instead, the Convention should be modified to a limited extent to resolve actual difficulties of practical application of its provisions and to bring it into conformity with the developments, economic and political, which have taken place during the last quarter of a century. Therefore, while recognizing the unquestionable value of the draft formulated at Paris by its sub-committee and of the preparatory and exploratory work undertaken by its rapporteur, Major K.M. Beaumont, particularly inasmuch as that draft represented a systematic rearrangement, including drafting improvements, of the contents of the Warsaw Convention and included also fresh treatment of certain subjects, the Committee decided that the object of effecting only limited, necessary amendments would be better achieved by taking as the basis of its discussions the Warsaw Convention itself rather than the Paris draft.

3. For convenience, the principal matters discussed by the Committee are treated in the following paragraphs under these heads:-

A. Scope of the Convention
B. Definition of "High Contracting Party" and "Territory"
C. Traffic documents
D. Negotiability of the air waybill (consignment note)
E. Limits of liability
F. Carriage of special cargo
G. Wilful misconduct
H. Liability of servants or agents of the carrier
I. Negligence in navigation
J. Miscellaneous.

This Report indicates the action taken by the Committee on each of these matters and, in general terms, the reason for such action. It must, of course, be appreciated that individual delegations in many cases had stated their own special reasons for the attitude they adopted: these will be recorded in the minutes of the proceedings.

A. Scope of the Convention

4. The Convention, under Article 1, applies only to international carriage as there defined which, with one exception, means, in substance, carriage between two States parties to the Convention. The Committee considered certain proposals to extend the definition so as to include also carriage between States neither or only one of which is a party to the Convention. It noted, however, that the Convention was already widely accepted and that certain additional States intended to accede to it, a fact which would render any such extension as suggested of diminishing practical importance. The idea of extending the scope of the Convention received considerable support in the Committee. It was realized, however, that attempts to apply the provisions of the Convention to carriage to or from States not bound by them would involve certain problems of private international law. Therefore, the Committee ultimately decided to recommend that no change be made in Article 1 of the Convention in regard to the scope of the Convention.

B. Definition of "High Contracting Party" and "Territory"

5. In Article 1 of the Convention, however, two other problems required action. First, the Convention uses the expression "High Contracting Parties" to describe not only States which have ratified or adhered to the Convention but also those which were original signatories of the Convention but have not ratified it. Secondly, the Convention was concluded between High Contracting Parties (Heads of States) in respect of their "territories", which expression (see Articles 1 and 40) was intended to signify all territories subject to the sovereignty, suzerainty, mandate or authority of a High Contracting Party. As a result of political developments since 1929, however, certain countries which were then included in the territories of the High Contracting Parties enumerated in the Preamble to the Convention have since attained independent international status. Further, the implied definition of "territory" as mentioned above does

not (and in 1929 could not) include territories subject to trusteeship. The Committee considered that the problems relating to "High Contracting Party" and "territory" would be resolved by adding a new article to the Convention defining these expressions (see Article XVII of the draft Protocol recommended by the Committee).

C. Traffic documents

6. Chapter II of the Warsaw Convention, in Articles 3 to 11, specifies requirements in great detail, particularly in Article 8, in regard to the contents of passenger tickets, baggage tickets and air waybills (consignment notes). Non-delivery of tickets or air waybills (consignment notes) or the omission of certain particulars therefrom entails the penalty of the carrier being deprived of defences and the limitation of liability. Inasmuch as air carriers experience difficulties in complying in every particular with these detailed requirements, and as such requirements are not sometimes fulfilled in the circumstances inseparable from speedy arrangements for air transportation, the Committee considered it to be expedient and also necessary that there should be a simplification of traffic documents required by the Convention. It was further considered to be undesirable that the requirements as to these matters should be defined in a convention: such international agreement as to the form of traffic documents as is needed should, in the view of the Committee, be reached by other methods which admit of more flexible adjustment to changing demands. Therefore, the Committee recommends that the Convention should lay down obligatory requirements only in two respects, namely that such documents should contain such particulars as would demonstrate that the carriage involved is international carriage within the meaning of the Convention and, secondly, that there should be a statement to the effect that the carriage is subject to the provisions of the Convention: the latter statement is required in order to bring to the notice of passengers that the Convention applies. If there is failure to comply with either of these two requirements, the carrier shall not be entitled to avail himself of any provisions which limit his liability in respect of the passenger, registered baggage or cargo, as the case may be (see Articles III to IX of the draft Protocol).

7. The draft Protocol also contains provisions in respect of the passenger ticket and the baggage check similar to those already existing (in Article 11 of the Convention) in respect of the air waybill (consignment note) insofar as all these traffic documents would constitute prima facie evidence of the conclusion and conditions of the contract of carriage. In addition, they would, in the case of registered baggage, constitute prima facie evidence in respect of their registration. Certain practical considerations also indicate the need for changes in the text of the Convention in so far as it relates to the requirement that the passenger ticket and the baggage check shall be delivered by the carrier (without making allowance for the common practice of such acts to be performed by travel agents on behalf of the carrier): this matter is taken care of in the proposed re-wording of Articles 3(1) and 4(1) of the Convention. The wording suggested in relation to the delivery of tickets is also such as to permit of the delivery of family or group tickets. Further, an amendment of Article 6 of the Convention was considered necessary to enable the carrier to "accept" cargo for consignment without delivering immediately the air waybill (consignment note), since the practice in air transportation is that such air waybills (notes) are made out at appropriate offices of the carrier situated at a distance from the several places where cargo is accepted for air carriage.

8. A minor change of a legal character was also made in Article 10(2) relating to the liability of the consignor. It is now provided that the consignor shall be liable for all damage suffered by the carrier, or any other person to whom the carrier is liable, by reason of the irregularity, incorrectness or incompleteness of the particulars or statements in the air waybill (consignment note). The qualifying words "to whom the carrier is liable" are an addition to the Warsaw text.

D. Negotiability of the air waybill (consignment note)

9. The Committee also considered the question of negotiability of the air waybill (consignment note). It, however, considered that work on the subject was not sufficiently advanced and that sufficient demand for the insertion of provisions relating to this matter had not yet been brought to the notice of the Committee to justify a recommendation that provisions relating to negotiability should be included in the draft Protocol. It therefore adopted a resolution that the matter be kept under separate study.

E. Limits of liability

10. An important aspect considered in relation to the question of revision of the Warsaw Convention was the economic one relating to the carrier's maximum liability in respect of the carriage of passengers (Article 22 of the Convention). In certain parts of the world, particularly the North American Continent, judicial awards of compensation for damage suffered by passengers, arising out of air carriage not governed by the Warsaw Convention, are often much higher than the maximum amount prescribed in Article 22 of the Convention. Consequently, views were expressed in the Committee that the existing limits of liability under the Convention should be increased. Another argument in support of this view was that the record of air safety had vastly improved since 1929 and therefore the carrier is now involved in lower risks than those prevailing in the earlier days of air transportation development, and consequently should be prepared to pay higher amounts on the fewer occasions of accidents. It was argued also that the cost of an increase, reflected in the additional insurance premiums payable, in relation to the cost of air transport generally, was small. On the other hand, some members of the Legal Committee stated that their governments considered the existing maximum limits of the Warsaw Convention to be satisfactory. The Committee also noted the study made by the Air Transport Committee of ICAO on the subject of limits of liability. The latter Committee was of the view that the value of the Poincaré franc specified in the Warsaw Convention is at present higher in certain parts of the world, although it is somewhat lower in others, than in 1929. Before the Legal Committee, it was urged that the objective of an international convention intended to be applicable to all parts of the world must take into account the different economic and monetary conditions in different countries; also that the objective of such a convention should be to meet the average requirements of the average class of passenger using international air transport. If any passenger desired higher protection, he could, at very little cost, obtain insurance to cover related risks of air transport. Moreover, the requirements of such passenger should not in effect be subsidized by the average passenger who, if the limits of liability in the Convention were fixed at a high figure, would have to pay a higher fare (which would include a higher rate of premium paid by the carrier to the insurer in respect of passengers generally).

11. After a detailed study, the Air Transport Committee had come to the conclusion that a limited increase, namely up to 50% of the existing limits of liability specified in the Convention, would be justified in respect of death or injury to passengers and that in any case the present limits in respect of non-fatal injuries ought to be increased. On the other hand, with respect to baggage and cargo, that Committee was of the opinion that there was no necessity to alter the limits of the Warsaw Convention. Before the Legal Committee, no proposals were made for any increase in respect of baggage and cargo. But in respect of passengers there were several proposals for increase, the largest being for increasing the existing limit by 200%. Another proposal was that the present limit should be increased by 50% but that there should be another limit which should be applied against the carrier in certain circumstances (see letter (b) in paragraph 16), and that the second limit should be double the first. By a vote of 16 to 9, the Legal Committee decided that it would be appropriate to increase, in respect of passengers, the limit of liability specified in paragraph 1 of Article 22 of the Warsaw Convention by 50% (which would have had the effect of substituting 187,500 gold francs in place of 125,000 gold francs); but, in order to achieve a rational and acceptable round figure of liability, the Committee subsequently decided by 15 votes to 8 that the existing limit of 125,000 gold francs should be increased to 200,000 gold francs (representing an increase of 60%). The latter decision is embodied in Article XI of the draft Protocol.

12. A related matter considered by the Committee was the conversion of the gold franc into national currencies. For this purpose the Committee decided to recommend adoption of the same formula as was embodied on this subject in the Convention relating to damage caused by foreign aircraft to third parties on the surface opened for signature at Rome on 7 October 1952 (see Article XI(c) of the draft Protocol).

13. An amendment which practical considerations indicated to be necessary was one concerning cases of loss, damage or delay of a part of registered baggage or cargo or of an article therein contained. A lacuna in this respect in the Warsaw Convention is to be filled by the insertion of a new provision numbered paragraph (2) in Article 22 of the Warsaw Convention (see Article XI(b) of the draft Protocol).

F. Carriage of special cargo

14. A difficulty experienced in actual practice was the absence of a provision in the Convention which would enable an air carrier to make special stipulations in regard to the risks of carrying cargo of special characteristics, such as live animals or goods suffering natural deterioration during carriage by air. A provision in this respect based upon analogous provisions of maritime law has therefore been proposed to be added to Article 23 of the Warsaw Convention (Article XII of the draft Protocol).

G. Wilful misconduct ("dol")

15. According to Article 25(1) of the Warsaw Convention, the carrier cannot invoke the provisions of the Convention which exclude or limit his liability if the damage is caused by "dol" or by such default on his part as, in

accordance with the law of the court seized of the case, is considered to be equivalent to "dol". The article has been much criticized. The Convention, being in French, uses the expression "dol". The nearest equivalent to this in English has been regarded as "wilful misconduct", but even this concept does not completely coincide with the conception of "dol". Secondly, the expression "default ... equivalent to 'dol'" has been regarded as intended to cover cases of "faute lourde", but there is no corresponding concept of this in the Anglo-Saxon legal system where, consequently, attempts have been made either to conceive of it as "gross negligence", a concept foreign to English civil law, or to disregard altogether that part of Article 25(1) which refers to "default ... equivalent to 'dol'". Further, even in courts on the Continent, there has been no uniform interpretation of what constitutes "faute lourde". In any case, the provision of the article which leaves to different courts in different jurisdictions the function of defining what default is to be "considered to be equivalent to 'dol'" carries the risk of conflicting interpretations on this point: and this is contrary to the objective of the Convention which is to ensure uniformity of rules on the subject. From the practical point of view these defects are of importance because of the tendency of claimants to evade the provisions of Article 22(1) and to attempt to benefit from the present imprecision of Article 25(1). Therefore, there was general agreement in the Committee that the article should be revised.

16. At an early stage of the session it was suggested that the question of limit (in Article 22) and that of cases in which no limit would apply (Article 25) should be considered together: a view expressed in this connection was that if some benefit was to be conferred on the passenger by raising the limit, a corresponding balance should appear in Article 25 in order that the carrier may be protected against litigation which is now possible because of the ambiguity of the present text of the article. One proposal in this connection was characterized by a suggestion of having two limits. The proposal was that -

(a) where the carrier fails to prove that he and his agents have taken all necessary measures to avoid the damage or that it was impossible to take them (Article 20(1)), the claim shall be subject to a specified limit which, specifically in relation to this entire proposal, was at one stage proposed to be raised from 125,000 gold francs by 50% and later by 100%;

(b) this limit would be doubled in cases where it is proved that the damage was caused by an act committed recklessly, not caring whether or not damage was likely to result; and

(c) where, however, the person suffering damage proves that it was caused by a deliberate act of the carrier, his servants or agents, done with intent to cause damage (unless with the object of avoiding greater damage), the liability shall not be subject to any limit.

The Committee, however, decided not to link, for the purpose of voting, the question of the limit of liability and that of the revision of Article 25. Therefore it determined first the question of the limit of liability (part (a) of the above proposal) and later rejected the rest of the proposal for amendment of Article 25 (3 votes for and 9 votes against).

17. The following proposals also were considered with regard to the revision of Article 25:

A. To substitute, for Article 25(1) and (2), the following:-

"The carrier shall be liable without limitation if the claimant proves:

(a) that the damage is caused by an act or omission of the carrier or of his servant or an agent of the carrier in the course of his employment; and

(b) that such act or omission was committed either with the intention to cause damage or recklessly by not caring whether or not damage was likely to result."

B. To delete from Article 25 the words "or by such default on his part as, in accordance with the law of the court seized of the case, is considered to be equivalent to wilful misconduct".

C. To substitute for paragraphs (1) and (2) of Article 25 the following:-

"The limits of liability specified in Article 22 of this Convention shall not apply if it is proved that the damage resulted from a deliberate act or omission of the carrier, his servants or agents done with intent to cause damage; provided that, in the case of a deliberate act or omission of a servant or agent it is also proved that he was acting within the scope of his employment."

Of these proposals the last mentioned was adopted by the Committee after a roll-call vote, by 12 votes to 11 with 2 abstentions, subject to drafting changes. The only drafting change ultimately made was to substitute the words "in the course of his employment" for the words "within the scope of his employment". Thus, the Committee ultimately revised Article 25 of the Warsaw Convention almost in the same manner as this subject was determined in Article 12 of the Convention on Damage caused by Foreign Aircraft to Third Parties on the Surface which was opened for signature at Rome on 7 October 1952.

H. Liability of servants or agents of the carrier

18. In spite of provisions in the Warsaw Convention limiting the liability of the carrier (except in certain cases), the existing text would not preclude the possibility that efforts might be made by claimants to obtain from the carrier higher damages than those specified in the Convention by filing actions against the servant or agent of the carrier, upon the basis that no provision existed in the Convention limiting the liability of the servant or agent and upon the assumption that the carrier would indemnify such servant or agent. In order that the carrier may be protected against this kind of litigation and in order to protect the servants and agents of carriers, a new provision, Article 25A, as specified in Article XIV of the draft Protocol, has been recommended. It may be noted that provisions to a like effect exist in the Rome Convention of 1952 referred to above.

I. Negligence in navigation

19. Article 20, paragraph 2 of the Convention provides that in the carriage of cargo and baggage the carrier is not liable if he proves that the damage was caused by negligence in pilotage or navigation or handling of the aircraft. The Committee considered that it would be illogical to maintain that provision since it embodies a rule so completely different from that governing the carrier's liability in respect of passengers.

J. Miscellaneous

20. The Committee also recommended -

(a) that the provisions of paragraph (2) of Article 2 of the Convention relating to exclusion from the scope of the Convention of carriage undertaken for postal authorities should be revised in the manner specified in Article II of the draft Protocol;

(b) that the word "days" used in Article 35 of the Convention should be redefined in the manner proposed in Article XVI of the draft Protocol;

(c) that the provision in Article 34 of the Convention, which excludes from its scope carriage performed by way of experimental trial, should be eliminated, in view of the advanced state which air transport has attained, and that the Article should exclude from the Convention only carriage performed in extraordinary circumstances outside the normal scope of an air carrier's business.

21. At the final meeting, mention was made of the problem which would arise from the coexistence of two systems, namely the Warsaw Convention as modified by the proposed Protocol, and the Warsaw Convention alone. In this connection the following proposal was made:-

"This Protocol shall apply to transportation as defined in Article 1 of the Convention, provided the points of departure and destination referred to therein shall be situated in the territory of a party or two parties to this Protocol".

No decision, however, was taken on the subject.

The Committee considered that the procedural provisions in the draft Protocol, including one relating to the number of ratifications necessary to bring the Protocol into effect, would best be determined in the proposed conference. The Committee, however, was of the view that the Protocol should not come into force unless a substantial proportion of the States parties to the Warsaw Convention ratified the Protocol.

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The Conference rejected, by a vote of 20 to 8, the proviso set out in the second part of the combined proposal of Sweden, Belgium and the Netherlands.

The text of Article XII resulting from the preceding decisions was referred to the Drafting committee, which was to take into account, on the one hand, the proposal of the United States to insert the word "solely" after "resulting" and, on the other hand, a proposal of the Egyptian Delegation to replace the word "provisions" by "stipulations" or "clauses".

Article XIV of the draft Protocol - Article 25A of the Convention

Mr. Alten (Norway) said that his Government proposed(1) to delete Article XIV of the draft Protocol.

The preamble of the Warsaw Convention provided that the Convention had been adopted in order to secure a uniform regulation of the conditions of carriage in regard to the documents used for such carriage and the liability of the carrier. The Convention contained no provision concerning the liability of servants or agents.

This article raised problems of private international law and would bring about conflicts of jurisdiction.

The servants or agents of the carrier were not parties to the contract of carriage. Their liability could only be extra-contractual and could be judged only according to some applicable law of tort.

The servants or agents could not reasonably -as stated in the Rio Protocol- avail themselves of defences based on the contract which the carrier could raise. For example, there were the provisions of the new Article 23, paragraph (2) and those of Article 26 concerning the periods for complaints. Moreover, with regard to Article 28, he pointed out that the court seised of the case could be a court of the State where the servant or agent had his residence or of which he was a national, a court of the State where his act or omission had been committed, or of the place where the damage had occurred. Lastly, Article 29 was concerned with a delay of extinguishment of actions. In the case of an action in tort, this delay could be altogether different from the delay applicable to the case of an action in contract brought against the carrier. Therefore, he considered it unacceptable that the servant or agent should be entitled to invoke the defences which the carrier might raise.

The last sentence of the Protocol, pursuant to which the servant or agent could be exposed to unlimited liability in cases which did not fall under Article 25, was contradictory.

Finally, he pointed to the provision that the total amount recoverable from the carrier, his servants and agents together, should not exceed the amount which could be recovered from the carrier under the provisions of the Convention. That provision would be effective only if the carrier and his servant or agent were judged in the same country and not if the actions were judged in the courts of different States which did not recognize the binding force and enforceability of foreign judgments.

(1) See I, 175.

For all these reasons, he proposed that Article XIV of the draft Protocol be deleted.

As an alternative, he would propose the following:

(1) that the words "all defences and limits of liability" in the first sentence be replaced by "all limits of liability";

(2) that the final sentence be replaced by: "The provisions of this article cannot be invoked by a servant or agent who has acted as contemplated in Article 25".

Mr. Garnault (France) seconded the proposal of the Delegate of Norway.

The first criticism which could be levelled at the present text was that, although there was a desire to limit the liability of the servants or agents of the carrier who were associated with aerial risks, this had not been done with clarity and, on the contrary, a provision had been drawn up which appeared to apply to all servants or agents without distinction.

The text could not be retained at all because, if it were included, it would involve structural modifications in national laws which were extremely difficult to consider. The text provided that the servants or agents could avail themselves of all defences and limits of liability which were available to the carrier under the provisions of the Convention. But, that could be embarrassing in certain cases. For example, in most legal systems, fault, even light fault (faute légère) which involved wounding or death, was submitted as a delict for consideration by repressive tribunals the competence of which was very strictly defined by the national law and the procedures of which were subject in particular to special delays of prescription. Under the proposed system, if the pilot were prosecuted for homicide through imprudence before a correctional court, he could commence by raising the question of the lack of jurisdiction of this court, if, for example, on being brought before the court of his residence, this court did not coincide with the two courts which could be seised of the case pursuant to the terms of the Convention. On the other hand, he could also avail himself of the extremely strict delay of extinguishment provided by the Convention if the judicial authorities of his country had not prosecuted him within the delay of two years established by the Convention.

The adoption of this provision would make it necessary, in France and probably in other countries, to upset the provisions of the Code d'instruction criminelle. He thought that it would be better to leave it up to the national laws to take this initiative in regard to servants or agents if they considered it to be useful.

He strongly supported the proposal of the Delegate of Norway to delete Article XIV of the draft Protocol.

Mr. Cooper (IATA) said that IATA hoped that this article would not be deleted because it met a pressing need. In spite of the technical difficulties which this might raise in certain States, the ICAO Legal Committee had taken a wise decision in recommending the addition of a new paragraph to Article 25 of the Warsaw Convention. The effect was that the pilot or the engineer of an aircraft could not be sued for an unlimited amount, while the carrier, their employer, could limit his liability.

Mr. Poulton (Australia) was in favour of the retention of Article 25A as set out in the draft Protocol.

In practice, the carriers already agreed to indemnify members of the crew in respect of claims arising out of the normal course of their employment, but he was in agreement with the IATA Observer that pilots' associations were greatly concerned that their members were subject to rules of liability which were substantially less favourable than those applicable to the carriers.

Mr. Alten had raised an objection to the proposal, saying that the action brought against the members of the crew was an action in tort. As far as the carrier was concerned, the Rio text made no difference whether the action was brought in tort or under contract. In his opinion, there was no valid distinction on this point between the carrier and the crew.

He wished to have the new Article 25A retained, but considered that the Drafting Committee should clarify one or two ambiguities. In particular, he pointed out that, if the present draft were interpreted literally, the servant would have all the defences of the carrier, even when acting outside the course of his employment.

Mr. Stalder (Switzerland) stated that the Swiss Delegation saw no necessity for amending the Convention by an Article 25A. However, in order to assist the courts which would have to pass judgment on cases now carefully regulated by this article, he was prepared to accept it.

With regard to this new paragraph, he wondered what would be the liability of the owner of the aircraft, when the carrier and the owner were not the same person. For example, he took the case where a company used, for the operation of an air service, an aircraft of another company which also placed the crew at the disposal of the first company. It was possible that in such a case, the passenger suffering damage would be tempted to claim compensation for the damage in excess of the limits of Article 22 from the owner of the aircraft, with whom he had no contract. Therefore, he proposed to insert, in the second sentence of the article the words "and the owner of the aircraft" between the words "agents" and "together".

Mr. Alten (Norway) suggested that the question raised by Mr. Stalder b discussed in relation to the report of the Sub-committee on Hire and Charter of Aircraft.

Mr. Stalder (Switzerland) accepted this suggestion.

Mr. Loaeza (Mexico) pointed out that many plaintiffs tried to obtain compensation in excess of that provided by the Convention, by suing the servants or agents of the carrier. In his opinion, this was an argument in favour of the inclusion of a provision like Article 25A. Mexican legislation had a similar provision which international carriers had sometimes asserted subsidiarily before the courts.

It seemed that there was general agreement on the principles. It was a question of obligations which arose out of illicit acts in the field of civil liability. The carrier was liable for the acts of his servants or agents, and it was necessary to protect the latter by granting them the limitation of liability provided in Article 25.

He regretted that he could not clearly see the difficulties which, in the opinion of Mr. Garnault, the adoption of the text would involve. He was in favour of granting the benefit of the limitation of liability in the case of servants or agents. As had been suggested by the Norwegian Delegation in its alternative proposal,(1)he agreed that the words "all defences" be

deleted from the Rio text, because these were personal defences.

In conclusion, he was in favour of the Rio text, with the amendment proposed by Norway.

Mr. Riese (Federal Republic of Germany) was in agreement with the Norwegian proposal and the French proposal to delete Article 25A. However, if the Conference could not accept these, he could adopt the article in question provided that the last sentence be brought into line with the decision which the Conference would take in regard to the text of Article 25.

Mr. Iuul (Denmark) recalled that the liability of servants or agents had been discussed at Rome and that the Conference had finally decided to delete from the Convention provisions concerning this liability. In the first place, it had been recognized that the assets of servants or agents were so small that there was no practical reason why the servants or agents should be sued under the Convention. Moreover, it had been pointed out that it would be dangerous to try to regulate national legislation in piece-meal fashion. If there were included in Article 25A a provision concerning the limitation of liability of servants or agents, it would be necessary to add a special rule on the forum, because existing rules on this subject could not be applied to the liability of servants or agents. The forum would probably be the domicile of the servants or agents. That meant that in many cases it would be their national legislation which would apply. It was up to the national legislations to protect them and it would be bad policy to include in the present Convention regulations regarding their liability, particularly since the Convention dealt only with contracts to which, moreover, they were not parties.

Mr. Malintoppi (IIUPL) recalled that the Rome Institute, on the invitation of the Comité maritime international, had established a study group where the different branches of transport were represented.

With regard to damage caused by servants or agents, the group had considered it necessary to extend to the servants or agents of the carrier the limitation of liability that was provided in the Convention for the benefit of the carriers. In the text of the Institute, which corresponded exactly to the Rio text, it was pointed out that "the servant or agent shall be able to avail himself of all defences which are available to the carrier". But the members of this group were particularly preoccupied with extending the limits of liability to the servants or agents.

In the text of Article 25A adopted by the Legal Committee at Rio, there was the expression: "If under applicable law...". This method of reference to the law which ought to be applied by the judge in a case of conflict had received the approval of the study group.

With regard to the remarks of the Delegate of Denmark against the inclusion of the text in the Convention, he pointed out that equitable reasons were stronger than doctrinal ones. Here, it was a question of provisions the interest of which did not affect the substance of the Convention and which were required particularly for equitable reasons.

He considered that the last part of Article 25A should be brought into line with Article 25 of the Convention as finally drafted, and he shared the opinion that it was necessary to delete the words "all defences", and to reserve for the servants or agents all the benefits of liability.

Mr. Hadjidimoulas (Greece) was of the opinion that Article 25A should be retained. The liability of the carrier provided by the Convention was a civil law liability. If the plaintiff were given the possibility of obtaining higher liability in the case where he chose to sue the servant or agent of the carrier, that would very often increase the liability which the carrier would assume pursuant to the contract of employment to compensate his employee. Moreover, this additional liability would, to a great extent, depend on the financial situation of the servant or agent and, if the latter were poor, the plaintiff would not be able to get anything. Thus, the principle of equal treatment of all users would not be followed.

Concerning the question of jurisdiction, he was of the opinion that it was not necessary to enter into any detail. It would be enough for this article to refer to the courts of Contracting States.

He thought that this article required many drafting improvements, particularly in the last part, and all the improvements of which the Delegate of Australia had spoken.

Mr. Findziński (People's Republic of Poland) considered that Article 25A was evidence of a certain amount of progress and that it granted the same conditions of liability, within the framework of the Convention, to servants or agents as to the carriers. The Polish Delegation considered that the new Article 25A was justifiable and desirable.

Mr. Golstein (Belgium) was in favour of Article 25A as set out in the draft Protocol. Without this article, the servants or agents, and particularly the crew, might be sued and ordered to pay the whole compensation in respect of the accident, while the operator would have the benefit of the limitation of liability. In principle, it was not the servants or agents who would pay compensation, but the employers. And, without Article 25A, the whole benefit of the Convention could be put aside.

Mr. Cavalcanti (Brazil) was in favour of including in the Convention an article which would permit the servants or agents to avail themselves of the limits and guarantees granted to the carriers by the Convention. This principle appeared to him to be essential. He proposed the retention of the first part only of the Rio text and the deletion of the last part, from the words "The total amount" , subject to whatever might be provided in Article 25. In his opinion, this provision had no influence on the national laws, since it would apply only in the case where the Convention would be applicable.

Mr. Drion (Netherlands) thought that it would be wise to restrict the scope of Article 25A to the limits of liability.

Mr. Booth (Canada) supported the principle on which this article was based, for two reasons: First of all, for an equitable reason in favour of the servants or agents concerned, and then, because the absence of such a clause would permit a complete evasion of the provisions of the Convention in regard to the limits of liability of the carriers.

To say that the pilots and crew members had no need of protection because they did not have any assets seemed to him to be a very poor reason. It seemed to him to be improper that the servant or agent should be liable for an amount higher than that which his employer might have to pay.

With regard to the possibility of avoiding the limits and obtaining indirectly that the carrier give compensation, he recalled that it was the current practice to include in contracts of employment a clause pursuant to which the servant or agent would be indemnified for any claim brought against him. It would, therefore, be necessary only to sue the pilot and to obtain a judgment against him; the carrier would then have to reimburse his servant or agent under the contract of employment.

For these reasons, he endorsed the proposal to include Article 25A and he was ready to accept any amendment which would make this provision clearer and more certain.

Mr. Gómez Jara (Spain) thought that there were several arguments in favour of the retention of Article 25A as set out in the draft Protocol. First of all, there was a logical reason, namely, the same regime should apply to the carrier and his servants or agents. Moreover, there was a reason of necessity. It was very important to cover the carrier and to protect him against claims which, by means of suits brought against his servants or agents, he would actually be called upon to bear.

It had been asserted that it would be better to leave it up to the national laws to settle this point. But that solution had the danger of a duality of regime, on the one hand, the regime of the Convention, and, on the other, that of the national law. Lastly, if the servant or agent were sued under a national law and if the carrier were sued under the Convention, there would be a double indemnity, which this provision was precisely intended to avoid.

On the other hand, an argument had been brought forward in regard to the indispensable application of the penal code of a particular country. It had been said that Article 25 covered injurious acts most of which fell under penal law, and that there would consequently be a conflict between the penal provisions of a State and the Convention. But this argument was also valid when the carrier committed an injurious act. There was the same interference, and that did not prevent the Delegates from defining the liability of the carrier in the Convention. If this were so, the Convention referred to civil liability and not to penal liability. That explained the necessity of Article 24, under the terms of which "in the cases covered by Articles 18 and 19, any action for damages, however founded, can only be brought subject to the conditions and limits set out in this Convention." That amounted to saying that even if there were a delict, the action in respect of civil liability arising out of the delict would have to be brought subject to the conditions and limits set out in the Convention. The exact application of Article 24, therefore, solved the problem as regards the carrier. It could be admitted without difficulty that this article would have the same effect with regard to servants or agents.

Lastly, it had been proposed that Article 25A not include a reference to the defences which were available to the carrier. The Spanish Delegation was of the opinion that it was necessary to retain both the limits and the defences, and it considered that the last part of Article 25A should agree with the text of Article 25 which the Conference would adopt.

Mr. Calkins (United States) was in favour of Article 25A, because this provision established an equitable and necessary principle. He was prepared

to support the amendment proposed by the Delegate of Norway to exclude a reference to defences. On the other hand, he considered that the limitation of liability in favour of the servants or agents should be applied only when they were acting within the scope of their employment. Therefore, he proposed to add: "acting within the scope of his employment" after "a servant or agent of the carrier".

Mr. Goodfellow (IUAI) approved the proposal of the United States Delegate but considered that the word "the" should be inserted before the word "damage" in the last sentence of Article 25A.

Mr. Ambrosini (Italy) recalled that he had submitted a proposal on the subject which was under discussion.

He had always thought that the Warsaw Convention regulated not only the liability of the carrier, but, at the same time, that of his servants or agents, and especially for the simple reason that, in his opinion, the carrier and his servants or agents were, from the legal point of view, the same person. But the pilots had always sought a provision in this Convention which would clearly define their own legal situation which was reasonable and appropriate. That was why he was pleading to-day again, as he had already done before, in favour of this claim, and he referred to the proposal submitted on this subject by the Italian Delegation.(1)

He considered that it was necessary to introduce an article in the Convention, and that this article should cover the situation of servants or agents under all the points of view expressed in the Convention vis-à-vis the carriers. Mr. Garnault had warned against encroachments on the national laws. It was precisely to avoid the application of these national laws (of course, only from the point of view of private law and not from the point of view of public or penal law) - that the situation of the pilots should be entirely regulated. Actually, if a pilot were prosecuted as being responsible for a penal delict, there would also be a civil action which, pursuant to the various legislations, could be submitted to an entirely different prescription. In order to offset this difficulty the law applicable should always be the same, that is, the Warsaw Convention. This was the reason why the proposal which he had submitted omitted the beginning of the text set out in the Rio Protocol: "If under applicable law ...".

The United States Delegate had proposed to insert in the article a reference to the effect that the servant or agent should act within the scope of his employment. He pointed out that this reference was included in the proposal which he had submitted to the Conference.

He stressed the fact that the Italian proposal was based on the principle that the liability of the servants or agents was covered by that of the carrier in every case, save where they had acted outside the scope of their employment and with intent to cause damage.

Mr. Wilberforce (United Kingdom) was in favour of including an article concerning the liability of the servants or agents.

In his opinion, there were two possible systems. The first would be to say that the servant or agent was liable as a carrier under the Convention and would have the benefits of the carrier's defences and limits of liability. The second would be to give the servant or agent only the benefit of the limits of

(1) See II, 229.

liability, and to leave outside the Convention the basis of his liability and the defences which would be available to him.

The first sentence of the text proposed in the Rio Protocol was actually a hybrid. It gave the servant or agent the benefit of the carrier's defences without making him liable in the same way as the carrier. That was illogical and appeared to him to be a sufficient reason for accepting Mr. Alten's proposal to remove all reference to defences. The position would then be that the basis of the liability of the servant or agent and the defences available to him would not be regulated by the Convention. He hoped that the Delegates of Italy and France would understand that the difficulties which they had raised would no longer exist since the article would deal only with the limits of liability.

With regard to Mr. Ambrosini's remarks, he pointed out that it would not be very equitable to exclude the limits in an action brought against the servants or agents, except in cases of wilful misconduct or when they had acted outside their authority. The servants or agents should be deprived of the benefit of the limits where they were guilty of such conduct as described in Article 25 of the Convention. In order to provide for this, it would be enough to adopt the second paragraph of Mr. Alten's proposal.

He was opposed to the amendment proposed by the United States Delegation whereby the servant or agent would be deprived of the limits of liability when he acted outside the scope of his employment. In his opinion, the question whether liability should be limited or unlimited should not depend on whether or not the servant or agent had acted within the scope of his employment, but rather on the nature of his conduct. It was not right that a servant or agent who had not acted negligently, should be deprived of his rights solely because he had not acted within the scope of his employment.

He was opposed to the proposal of Brazil to delete, from the second sentence of the Rio text, the reference to the total amount recoverable from the carrier and his servants or agents. He thought that this deletion would encourage the claimant in every case to sue the pilot as well as the carrier.

Briefly, he proposed to amend the beginning of the first sentence as suggested by the Delegate of Australia, to exclude any reference to defences as recommended by Mr. Alten, and to adjust the last sentence so as to agree with Article 25 without changing that article.

Mr. Pedreira (Portugal) considered that a principle limiting the liability of servants or agents was useful and just, for the servant or agent deserved the same protection as the carrier. Therefore, the regimes governing their liability should be identical. If such a principle were not established, the carrier might find himself in a situation where the system of limited liability could not apply.

In his opinion, the question of defences which would be available to the servant or agent could be left aside.

With regard to the upsetting of the national systems of penal law, he pointed out that the Conference was very probably going to be led to approve a principle of limited liability which would apply to certain cases of negligence where there would be a criminal violation. The argument in question had not been raised against this principle.

He approved the amendment proposed by the United States Delegation to apply the principle of limited liability only in the case where the servant or agent had acted in the course of his employment.

Mr. Garnault (France) said that he was not at all impressed by the non-discriminatory considerations of equity which had been invoked in favour of the Rio text. If he could not subscribe to these considerations, it was particularly because he saw from the text that the benefit of the limitation was going to apply without discrimination to those who were included in the crew and to those who, on the surface, by an inadvertence in the preparation of the mechanical elements of the apparatus, would be the authors responsible for the accident occurring during flight.

His aim was that the text finally adopted should not impose on national legislators needless changes in structure and changes of principle in the arrangement of procedures.

Lastly, he was prepared to support the alternative proposal of Norway. The deletion of the benefit of the defences in favour of the servant or agent, would be a useful work, because that deletion would, at the same time, bring about the deletion of the difficulty raised by problems of prescription and jurisdiction to which he had previously referred.

It was necessary not to stretch the analogy between the situation of the servant or agent and that of the carrier. Under the Convention, the situation of the carrier was harsh in certain respects, since it was based on a regime of presumption of liability. The situation of the servant or agent, who would be sued in a distinct and personal manner, was altogether different, since he could be liable only on the proof of a fault on his part.

By way of compromise, he would forego requesting the deletion of Article 25A, but it was necessary to delete at least the expression "all defences".

The Conference rejected, by a vote of 24 to 4, the proposal of the Norwegian Delegation to delete Article XIV of the draft Protocol.

The Conference rejected, by a vote of 23 to 2, the text of Article XIV proposed by the Italian Delegation, seconded by the Delegation of Egypt.

The Conference adopted, by a vote of 25 to 2, the alternative proposal of Norway, pursuant to which the servants or agents of the carrier could avail themselves of the limits of liability, but of not "all defences".

The Conference decided, by a vote of 30 to 0, that the end of Article XIV of the draft Protocol should be adapted to the text that the Conference would adopt for Article 25 of the Warsaw Convention.

The Conference adopted, by a vote of 20 to 4, the proposal of the United States Delegation to add the words "acting within the scope of his employment" after the word "carrier".

The Conference adopted, by a vote of 28 to 0, Article XIV of the draft Protocol as amended by the above-mentioned decisions and referred it to the Drafting Committee with a request that the Committee consider whether the beginning of this article should be drafted in the way proposed by Australia.(1)

(1) See I, 216.

(The meeting adjourned at 1245 hours)

that the expressions "course of his employment" and "scope of his employment" were exactly the same. However, he thought that the Conference was right to use the traditional language, which was, perhaps, a more accurate translation of the French text.

Mr. Calkins (United States) agreed entirely with what Mr. Cooper had just said.

Article XIV of the draft Protocol - Article 25A of the Convention

The President placed before the meeting the text of the following re-draft of Article 25A prepared by the Delegate of New Zealand:

"(1) If in the case covered by Articles 17, 18 and 19 an action for damages is brought against a servant or agent of the carrier, the limits of liability specified in Article 22 shall apply, provided the damage resulted from an act or omission within the scope of the employment of the servant or agent. The aggregate of the amounts recoverable from the carrier, his servants or agents together, shall not exceed the amount which could be recovered from the carrier under this Convention.

"(2) Paragraph (1) shall not apply if it is proved that the damage resulted from an act or omission of the servant or agent done with intent to cause damage or recklessly and with knowledge that damage would probably result."

Mr. Heller (New Zealand) pointed out that he did not particularly like, in the text of the Drafting Committee, the words "damage contemplated by this Convention" and the words "when his act or omission comes within the provisions of Article 25". If the Conference were preparing an amendment to the existing Convention, then it should try to have the amendment in the wording and spirit of the Convention. In his draft, he had used mainly words which appeared in the existing text of Article 24 of the Convention which said: "In the cases covered by Articles 18 and 19". He had also used and repeated the words in the text of the new Article 25.

Mr. Calkins (United States) said that the reason for the wording "If an action for damage contemplated by this Convention" was that no case of an action in tort against a servant or agent was governed by the Convention, which related to the liability of the carrier towards passengers and shippers. What Article 25A envisaged was damage of a type covered by the Convention. He had recommended that the words "of the type" be inserted between the word "damage" and the word "contemplated" in Article 25A, but these words had been considered by the other members of the Drafting Committee to be superfluous.

The New Zealand proposal referred to cases covered by Articles 17, 18 and 19. But this would cause some difficulty, since some cases involving servants or agents were never covered by the Convention. The cases he had in mind were the direct actions under tort law against servants or agents.

Mr. Mintz (Israel) said that the enumeration of Articles 17, 18 and 19 only in the New Zealand proposal was not desirable since, if only these articles were mentioned in Article 25A and if other articles of the Convention were applicable, then the application of these other articles might render the principle of Article 25A altogether inapplicable. Therefore, he proposed that the Drafting Committee should not specify any articles in Article 25A and that it should also take into consideration the fact that actions in tort might be brought which would not be founded on the Convention, but which, nevertheless, fell within the principles established by the Convention. He did agree with the reference in the New Zealand text to the limits of liability specified in Article 22. That would bring the text of Article 25A into line with what had been decided in regard to Article 25.

Mr. Wilberforce (United Kingdom) said that the text of the Drafting Committee was ambiguous in the use of the words "limits of liability which are available to the carrier under this Convention". The alternative meanings were that either the text referred to Article 22, without saying so, in which case the Conference should accept the New Zealand clarification of a specific reference to Article 22, or that it referred to the availability of limits to the carrier, thus referring to Article 3, for example. Article 3 said that the carrier should not be entitled to avail himself of the limits if he did not issue a ticket. Therefore, supposing the carrier did not issue a ticket, was the servant entitled to avail himself of the limits of liability? His Delegation felt that the servant should be so entitled and, if so, the New Zealand amendment should be accepted. If not, the existing text should be clarified to make the contrary clear.

He considered as absurd the last sentence of Article 25A prepared by the Drafting Committee, namely: "The provisions of this article cannot be invoked by a servant or agent when his act or omission comes within the provisions of Article 25." One of the provisions of the last part of Article 25 was that the servant or agent must be acting within the scope of his employment. It could not be a condition of unlimited liability to show that the servant or agent was acting within the scope of his employment. The Conference should accept the New Zealand text which stated that the servant or agent only attracted unlimited liability, if he acted with intent or knowledge that damage would probably result.

Mr. Stalder (Switzerland) said that the intent of Article 25A was to give the servants or agents the benefit of the same privileges as those enjoyed by the carriers. But the text of the Drafting Committee did not express this intention exactly. The servant or agent enjoyed only a part of the privileges enjoyed by the carrier. He knew that the Conference had taken a decision along these lines, but a correction was needed. The text presented by the Drafting Committee stated that the servant or agent would "be entitled to avail himself of the limits of liability which were available to the carrier under this Convention". He felt it was necessary to be logical and extend this right of the servant or agent to the case where the carrier was not liable at all. Therefore, the text should be: "... be entitled to avail himself of the possibilities of excluding liability and of the limits of liability which are available to the carrier under this Convention".

Mr. Heller (New Zealand) accepted a suggestion of Mr. Drion (Netherlands) that the first part of the New Zealand proposal should begin with the words: "If an action for damage for which the carrier is liable following the provisions of this Convention is brought".

Mr. Calkins (United States) said that, while his Delegation had the greatest sympathy and desire to afford pilots and other operating personnel who might be liable, a limitation of liability, it was only when the desire to protect the pilot against unlimited liability was joined to the avoidance of a circumvention of the limitation provisions (that is, through a suit brought against the pilot and for which the carrier himself was responsible because of a contract between himself and the pilot) that Article 25A could be considered to be a useful provision. There should be no limitation of the tort liability of the servant or agent apart from the second consideration. The Convention was designed primarily to regulate and govern the liability of the carrier to passengers and shippers. Article 25A should not be concerned with the single motive of protecting the servants or agents.

In the case mentioned by the United Kingdom Delegate, where, because of failure to deliver a ticket, the carrier would have unlimited liability, there was no need for bringing the second element into play, as the provision for the non-circumvention of the Convention would not have a particularly good effect under these circumstances.

With regard to the suggestion of the Swiss Delegate, he pointed out that the Conference was not drafting a tort convention giving the employee additional defences to those he normally had under applicable law. The employee should continue to be liable under applicable law.

Mr. Riese (Federal Republic of Germany) agreed that it was necessary to avoid excluding actions which were not based on Articles 17, 18 and 19. Therefore, a reference to specific articles should not be included at the beginning of Article 25A.

He did not agree with the Netherlands proposal to speak of "damage for which the carrier is liable", because the article did not say that the carrier must be liable. It was quite possible that the carrier might exonerate himself pursuant to Article 20 and that the plaintiff might then bring an action against the servant or agent. Therefore, the words in question might read: "The matter in respect of which the carrier is, or could be, or would be liable". It was a matter for the Drafting Committee to settle.

Mr. Drion (Netherlands) said that Mr. Riese had said that Article 25 A would also apply in cases where the carrier himself would not be liable. He (Mr. Drion) felt that the Conference had already taken a decision that that should not be so. The reason why the Conference had voted as it did, when adopting Article 25A, was to ensure that passengers could not get around the provisions of the Convention by suing the servant or agent.

Twenty-ninth Meeting

Mr. Alten (Norway) found the words "damage contemplated by this Convention" satisfactory. He wanted to know why the Drafting Committee had omitted the reference to the obligation under national law. It was not the Convention, but the applicable national law, which determined the conditions of liability of the servants or agents. The only object of Article 25A was to give the servant or agent the benefit of the same limitations of liability as provided for the carrier.

Mr. Loaeza (Mexico), Chairman of the Drafting Committee, said, in reply to Mr. Alten's question, that the action brought against the servant or agent for any of the damages specified in the Convention could be brought either under national law or under the Convention itself. Therefore, it had been considered better not to mention the national law expressly.

Mr. Calkins (United States) said that there was no idea that a suit could be brought against servants or agents under the Convention, since the Convention did not provide for any sort of tort action. Therefore, the reason why the phrase "applicable law" had been deleted was to avoid the question as to whether, in fact, the law might be applicable.

The President announced that it had been agreed by the German and New Zealand Delegations that there was no difference in their respective views.

Mr. Wilberforce (United Kingdom) said that the Conference had to choose between two alternatives: (1) "Is the servant or agent entitled to the limits of liability in every case except cases of his own wilful misconduct as defined in Article 25?"; (2) "Is the servant or agent only entitled to the limits of liability if, in addition, the carrier is entitled to claim the benefit of limits of liability?"

Mr. Rinck (Federal Republic of Germany) said that the first alternative might be worded as follows: "Is the servant or agent entitled to avail himself of the limitation even if the carrier, his master, cannot avail himself of it?"

Mr. Calkins (United States) said that if the Conference made the limitation of liability available to the servants or agents when such limitation was not available to the carrier, for torts committed under national law, this would make it much more difficult for a number of States to ratify the Convention.

The Conference adopted a proposal of Mr. Garnault (France) to postpone further discussion on the questions formulated by the United Kingdom until they could be presented in writing.

CONSIDERATION OF AMENDMENTS TO THE CONVENTION ADDITIONAL TO THOSE SET OUT IN THE DRAFT PROTOCOL

Article 40 of the Convention (Continuation of discussion)

The Conference referred to the Committee on Final Clauses the following proposal of the Delegation of Lebanon, seconded by the Delegation of Italy, concerning the amendment of Article 40 of the Convention:

"In order that Article 40 of the Warsaw Convention may be in conformity with and uniform with Article 36(2) of the Rome Convention and the definition of 'territory' in Article XVII of the draft Rio Protocol, the Lebanese Delegation proposes that the article be amended as follows:

'The High Contracting Parties may at the time of deposit of their instrument of ratification or adherence, declare that their acceptance of this Convention does not apply to any one or more of the territories for the foreign relations of which such High Contracting Parties are responsible.'"

70. CONSIDERATION OF THE DRAFT PROTOCOL ARTICLE BY ARTICLE - Second reading(1)

Article VII of the draft Protocol - Article 9 of the Convention (Continuation of discussion)

Mr. Iuul (Denmark) said that, in Article 6(3) of the Warsaw Convention, it was said that: "The carrier shall sign on acceptance of the goods." Article 9 of the Convention said:

"If the carrier accepts goods without an air consignment note having been made out, or if the air consignment note does not contain all the particulars set out in Article 8(a) to (i) inclusive and (q), the carrier shall not be entitled to avail himself of the provisions of this Convention which exclude or limit his liability."

On the previous day, the Conference had adopted the following new wording for Article 6(3):

"The carrier shall sign prior to the loading of the cargo on the aircraft."

In the new Article 9 it was said: "If the carrier carries cargo without an air waybill". There seemed to be a gap between the two points of time, that is, between the loading and the commencement of the carriage. It might be said that the rules of Article 18 would apply in this case. But, if that were correct, Article 9 should read: "If the carrier carries cargo by air without an air waybill". A better way of expressing this idea would be to say in Article 9: "If the carrier receives on board the aircraft cargo without an air waybill". Then there would be no gap between the loading and the commencement of carriage.

Mr. Riese (Federal Republic of Germany) and Mr. Drion (Netherlands) supported Mr. Iuul's proposal.

(1) See II, 122-128.

Mr. Ambrosini (Italy) said that the Conference had now provided that the air waybill should be signed prior to the loading of the cargo. Meanwhile, the cargo could be in the custody of the carrier without the consignor having any document to prove the handing over of the cargo and the contract which he was going to enter into. But there was Article 18(2) of the Convention which read which read as follows:

> "The carriage by air within the meaning of the preceding paragraph comprises the period during which the luggage or goods are in charge of the carrier, whether in an aerodrome or on board an aircraft, or, in the case of a landing outside an aerodrome, in any place whatsoever."

Now, if the cargo were handed over to the carrier, Article 18 must apply, that is, the Convention with all its provisions must apply even if the air waybill had not been signed. Thus, it seemed that there was an obvious contradiction between the new Article 6(3) and Article 18.

Mr. Riese (Federal Republic of Germany) said that Mr. Ambrosini was right. According to Article 18, the carrier was liable as soon as he took the cargo in charge and as long as an air waybill had not been made out he would have unlimited liability according to the provisions of the Convention. It seemed to be senseless to submit the carrier to unlimited liability in respect of the period of time during which he had the cargo in charge, the cargo not having been loaded on board the aircraft. If, for example, the cargo were carried by automobile from a town to the aerodrome, or even if the cargo were in a warehouse, and damage resulted, there was no reason for subjecting the carrier to unlimited liability. Unlimited liability should apply only in the case where the carriage had been effected by an aircraft without an air waybill having been made out. Since, as the Observer from IATA had said, the carrier should be given the possibility of making out the air waybill later on and of signing it only at the time of loading of the cargo, it was necessary to cover the period of time between acceptance of the cargo and the loading of it on board the aircraft. The difficulty could be settled by including at the beginning of Article 9 the words: "If the carrier loads the cargo on board the aircraft without an air waybill having been made out". Only then would unlimited liability begin to apply if the air waybill had not been made out.

The Conference then decided to refer Article VII of the draft Protocol - Article 9 of the Convention - to the Drafting Committee on the understanding that the words "If the carrier carries the cargo" as used in Article 9 applied to the case where the carrier had received the cargo on board the aircraft without an air waybill having been made out, it being also understood that the Drafting Committee could find some wording along the lines suggested by Mr. Iuul to satisfy the difficulty raised by him.

(The meeting adjourned at 1310 hours)

THIRTIETH MEETING

(Sunday, 25 September 1955 at 1430 hours)

President: Mr. D. Goedhuis

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71. RECOMMENDATION OF THE CONFERENCE ON THE NEGOTIABILITY OF THE AIR WAYBILL

The Conference rejected, by a vote of 13 to 10, the draft recommendation of the Delegations of Ireland and Israel on which there had been a tie vote at the twenty-ninth meeting.(1)

72. CONSIDERATION OF THE DRAFT PROTOCOL ARTICLE BY ARTICLE - Second reading(2)

Article XIV of the draft Protocol - Article 25A of the Convention (Continuation of discussion)

The President pointed out that discussion would continue on the questions of principle to be decided in respect of Article 25A, these questions having been presented by the United Kingdom Delegation at the twenty-ninth meeting.(3)

Mr. Alten (Norway) proposed the following new text(4) for Article 25A:

"1. If under applicable law a servant or agent of the carrier, acting within the scope of his employment, is liable for damage contemplated in this Convention he shall, in an action brought against him in the territory of a High Contracting Party, be entitled to avail himself of the limits of liability provided for carriers in Article 22, unless he has acted as contemplated in Article 25.

"2. If also the carrier or two or more of his servants or agents are liable for the same damage the claimant shall not be entitled to a total compensation in excess of the limit, unless the liability of any of them is unlimited."

The text proposed by the Drafting Committee had left out the reference to the application of the national law although the Convention dealt only with the liability of carriers.

The first paragraph of the Norwegian proposal dealt with the liability of the servant or agent and the only benefit which he had was that he could invoke the limits provided in Article 22. The servant or agent was not a party to the contract of carriage and therefore could not invoke other defences which were open to the carrier according to the Convention or Protocol. It was possible that a servant or agent might be liable in tort, although the carrier would be free of liability.

In the case of the second paragraph of the Norwegian proposal which contemplated the liability of several defendants, only the defendant whose liability was unlimited would have to pay an unlimited amount, while the other defendants would only be liable to cover the damage up to the limit.

Mr. Garnault (France) said that his Delegation would vote against both of the alternatives set out in the United Kingdom proposal, since it was against including in the Convention an article governing the liability of servants or agents.

(1) See I, 342
(2) See II, 122-128
(3) See I, 354
(4) See II, 235-236

With regard to the first alternative, it was possible that the servant or agent might be sued in a jurisdiction entirely separate from that which was competent to judge the liability of the carrier and that the servant or agent might be obliged, in order to invoke the limits of liability, to prove that the carrier himself was entitled to invoke the limits under the Convention. Meanwhile, the carrier might be sued in another jurisdiction, that is, one of those provided by the Convention. Under these circumstances, how could the judgment concerning the liability of an absent carrier rendered in the court in which the suit was brought against the servant or agent be reconciled with the separate judgment which would be made in regard to this matter by another court in the case brought against the carrier under the Convention?

He had thought that it had been the intention of the Conference to protect the limit rather than the servant or agent. But, the second alternative which gave the servant or agent the benefit of the limit of liability even where the carrier was not entitled to the limit, seemed to protect the servants or agents, even where they did not merit such protection. For example, the servant or agent on the surface, who took no aerial risk and who, by his negligence, might have caused the accident, would be protected. He would be able to invoke a limitation of liability without the situation of the carrier being considered. To give servants or agents on the surface such protection would constitute a serious interference with the system of liability of the servants or agents of air carriers.

As far as Mr. Alten's proposal was concerned, he thought that it presented the same difficulties as the second alternative of the United Kingdom proposal.

Mr. Wilberforce (United Kingdom) pointed out, in response to a question of the President, that both the Norwegian text(1) and the New Zealand text(2) in effect adopted the second alternative of the United Kingdom proposal.

Mr. Calkins (United States) gave the example of an aircraft piloted by an employee of a carrier. That aircraft might be carrying Warsaw passengers, non-Warsaw passengers and domestic passengers. Aboard that aircraft there might be a Warsaw passenger whose ticket might be defective in the sense of Article 3 and, therefore, the liability of the carrier towards that passenger would be unlimited. Three situations would arise: (1) The liability of the carrier would be limited because of the Convention; (2) his liability would be unlimited because of the Convention; (3) the Convention would not deal with the carrier's liability. Unless the Conference wished to change the basic character of the Convention, all it could do was to include a provision with respect to Article 25A which related to the first case, that is, where the carrier's liability was limited and carriage under the terms of the Convention was involved. The Norwegian text would go as far as the second case, where the ticket was not in order and the carrier had unlimited liability and might even extend to the third case of non-Warsaw carriage.

The Conference should not adopt a text which would go beyond the Rio text of Article 25A which was carefully limited to the defences and limits of liability which were available to the carrier and not to a carrier.

(1) See I, 358
(2) See II, 233

Thirtieth Meeting - 360 -

Mr. Riese (Federal Republic of Germany) said that the object of Article 25A was only to guarantee the servants or agents a certain measure of protection where those suffering damage brought their actions not against the carrier, but against the servants or agents. Such actions would be in tort, since there would be no contractual relationship between the claimant and the servants or agents. These actions would also be under national law. Since actions in tort were involved, there was no reason for restricting the rule of Article 25A along the lines of the first alternative proposed by the United Kingdom Delegation. Thus, if the carrier were subject to unlimited liability because he had not delivered the passenger ticket, that was no reason for imposing unlimited liability on his servant or agent.

He could not agree that the second alternative gave an unjustifiable protection to the servant or agent, since the servant or agent would be subject to unlimited liability if he acted under the conditions set out in Article 25. He was in favour of the second alternative proposed by the United Kingdom Delegation and thought that the Norwegian text gave a better expression to the principles involved than the present text.

Mr. Alten (Norway) stressed that, in an action against a servant or agent of the carrier, there was no question of the liability of the carrier. There was only the question of the liability of the servant or agent in tort according to the applicable law. The intention was that the servant or agent should have the benefit of the limits accorded to carriers. It was not a question of whether the carrier himself could claim this benefit.

The rule expressed in the second paragraph of the Norwegian proposal would fail if the actions were brought before courts of different States which did not reciprocally recognize the binding force of their judgments.

Mr. Ambrosini (Italy) said that Mr. Alten's text envisaged acts which were outside the scope of the Convention, That text made a reference to national laws. But the Convention dealt with contracts for air carriage from the international point of view and he wondered, therefore, why such a text should be included in the Convention. Moreover, he found it rather strange to give the pilot the benefit of entitlement, on the basis of the Convention, to the limits of liability while, for example, under Italian or French law, the pilot did not have the right to limited liability. There were two very clear alternatives: Either to have an article on servants or agents which subjected them entirely to the provisions of the Convention, or to eliminate completely this provision from the Convention.

Mr. Poulton (Australia) said that the question before the Conference had already been resolved in principle. He did not agree with Mr. Riese's statement that the purpose of the article was to protect the servants or agents. Its purpose was to prevent the breaking of the carrier's limit by means of the device of suing the servant or agent in circumstances where the latter might be under a right to be indemnified by the carrier. It was purely fortuitous that the article might, therefore, confer substantial benefits on the servants or agents of the carrier.

His Delegation supported the first alternative proposed by the United Kingdom Delegation.

Mr. Calkins (United States) agreed with Mr. Poulton's statement that Article 25A had been inserted in the Protocol to protect the carriers' limits. Everyone knew that the contracts between carriers and pilots required the carriers to indemnify the pilots in the event of suits brought against the latter. Such contracts had the effect of permitting an indirect escape from the limits of liability through suits against pilots for which the carrier was fully responsible. It was not the intent that the provision in the Rio Protocol broaden the Convention so as to give limits of liability to pilots. Even if the second alternative were adopted, it would not give limits of liability to pilots, because international carriage that fell outside the Convention would still be subject to unlimited liability. In view of the foregoing, the first alternative should be accepted.

Mr. Wilberforce (United Kingdom) pointed out that the aim of the Conference was to prevent an indirect breaking of the limits through suits brought against the pilot. The Conference had, in effect, already taken a decision in regard to the first alternative, since it had decided that the servant or agent was to be entitled to the benefit of the limit only when he was acting within the scope of his employment. That seemed to be an indirect recognition of the fact that the article was to apply only to cases in which the carrier would otherwise be liable. If that were not so, there would be no sense in imposing the restriction, if the object were merely to protect the pilot. One would protect him in any case whether he was liable or not. Therefore, this was a reason for saying that the Conference had already decided in favour of the first alternative of the United Kingdom proposal.

Mr. Roxas (Philippines) said that there was no reason to vote for either of the alternatives of the United Kingdom proposal. It was a cardinal principle of the law of principals and agents that the liability of the agent was measured by the liability of the carrier himself under the rule that the liability of the principal was the one that governed.

Mr. Riese (Federal Republic of Germany) understood that the intention of the article was to protect the carriers. But it should not be forgotten that the consequence of this was that a pilot would be personally responsible to the extent of his whole property by the mere fact that the carrier had forgotten to deliver a ticket, while the same pilot would not be subject to unlimited liability even though his national law did not admit limits, because his carrier was subject to limited liability.

The Conference adopted, by a vote of 14 to 7, the solution suggested in the first alternative of the questions of principle presented by the United Kingdom Delegation.

The Conference decided that, in view of this decision, the Norwegian proposal should not be considered any further.

The Conference referred to the Drafting Committee the proposal of the New Zealand Delegation.

EXHIBIT H--ALEXANDRE V. E.A.L. OPINION ANNEXED TO PLAINTIFFS' SUPPORTING MEMORANDUM OF LAW

RAYMONDE ALEXANDRE and ANDRE ALEXANDRE v. EASTERN AIRLINES, INC. and AMERICAN AIRLINES, INC.

United States District Court, Western District of New York, September 15, 1965.

HAGUE PROTOCOL—RATIFICATION FAILURE—PERSONAL INJURIES.—Failure of the United States to ratify the Hague Protocol to the Warsaw Convention prevents the application of the Protocol by the New York courts. Therefore, the Protocol was not available as an affirmative defense in an action by French nationals who sought to recover for personal injuries incurred when a loading ramp at a U. S. airport collapsed while the passengers were boarding a domestic charter flight which had originated and was to terminate in France.

Back reference: ¶ 17,303.82.

Miller, Bouvier, Kratzer & Ulsh, and Gerald Bouvier, Buffalo, New York, for Plaintiffs.

Adams, Brown, Starrett & Maloney, and Arthur J. Maloney, Buffalo, New York, for Defendants.

[*Statement of case*]

HENDERSON, District Judge: The plaintiffs move to strike the defendants' sixth affirmative defense which is based upon the applicability of the Hague Protocol.

This is an action for personal injuries sustained on August 29, 1964, at the Greater Buffalo International Airport when the plaintiff Raymonde Alexandre ascended a loading ramp, owned and managed by the defendant American Airlines, Inc., to board a chartered aircraft, owned and operated by the defendant Eastern Airlines, Inc., and the ramp collapsed. The plaintiffs are French nationals and at the time of the accident were traveling as part of a scheduled circular group tour with its place of origin and destination in France. Jurisdiction is based upon diversity of citizenship.

[*Applicability of Hague Protocol*]

No authorities have been found or called to the court's attention which substantially aid in resolution of this question. However, in the court's opinion, the courts of the State of New York would not apply the Hague Protocol in light of the failure of the United States to ratify the Protocol. Accordingly, the motion to strike is granted.

So ordered.

UNITED STATES OF AMERICA v. THE STATE OF WASHINGTON and WENAIRCO, INC.

THE STATE OF WASHINGTON v. THE UNITED STATES OF AMERICA

United States Court of Appeals, Ninth Circuit, October 19, 1965.

AIRCRAFT ACCIDENT—COLLISION WITH AERIAL SPAN—NEGLIGENCE.—While at the time of an aircraft collision with a 500 foot high power line there was no warning device suitable for attachment to the electric conductor lines, but there was a marker in existence which could have been attached to the higher ground wire and which might have alerted airmen to the danger of the conductor wires below, the failure to install the available warning marker constituted negligence.

COLLISION WITH UNMARKED POWER LINES—PILOT'S CONTRIBUTORY NEGLIGENCE.—The pilot of a small aircraft was contributorily negligent in a collision with high altitude power lines even though such lines were unmarked, because the pilot was familiar with the area and with aeronautical charts which contained a warning of the presence of the lines.

Frank R. Freeman, Carroll D. Gray, John L. Bishop, and Frank M. Potter, Jr., for the United States of America.

John J. O'Connell, R. Ted Bottinger, and Basil L. Badley, for the State of Washington.

A 76

EXHIBIT 1(a)--CONVENTION ON DAMAGE CAUSED BY FOREIGN AIRCRAFT TO THIRD PARTIES ON THE SURFACE. DONE AT ROME ON 7 OCTOBER 1952, 310 U.N.T.S. 181 (SELECTED PAGES) ANNEXED TO PLAINTIFFS' SUPPORTING MEMORANDUM OF LAW

No. 4493. CONVENTION[1] ON DAMAGE CAUSED BY FOREIGN AIRCRAFT TO THIRD PARTIES ON THE SURFACE. DONE AT ROME, ON 7 OCTOBER 1952

The States signatory to this Convention

Moved by a desire to ensure adequate compensation for persons who suffer damage caused on the surface by foreign aircraft, while limiting in a reasonable manner the extent of the liabilities incurred for such damage in order not to hinder the development of international civil air transport, and also

Convinced of the need for unifying to the greatest extent possible, through an international convention, the rules applying in the various countries of the world to the liabilities incurred for such damage,

Have appointed to such effect the undersigned Plenipotentiaries who, duly authorised, have agreed as follows :

CHAPTER I

PRINCIPLES OF LIABILITY

Article 1

1. Any person who suffers damage on the surface shall, upon proof only that the damage was caused by an aircraft in flight or by any person or thing falling therefrom, be entitled to compensation as provided by this Convention. Nevertheless there shall be no right to compensation if the damage is not a direct consequence of the incident giving rise thereto, or if the damage results from the mere fact of passage of the aircraft through the airspace in conformity with existing air traffic regulations.

2. For the purpose of this Convention, an aircraft is considered to be in flight from the moment when power is applied for the purpose of actual take-off until the moment when the landing run ends. In the case of an aircraft lighter than

[1] In accordance with article 32, the Convention came into force on 4 February 1958, the ninetieth day after the deposit of the fifth instrument of ratification, as between the following States on behalf of which the instruments of ratification were deposited with the International Civil Aviation Organization on the dates indicated below :

Egypt	23 February 1954	Spain	1 March 1957
Canada	16 January 1956	Pakistan	6 November 1957
Luxembourg	19 February 1957		

In addition, in accordance with article 34, the Convention came into force with respect to Ecuador on 11 August 1958, the ninetieth day after the deposit of its instrument of adherence on 14 May 1958.

A 77

Exhibit I(a) Annexed to Plaintiffs' Supporting Memorandum of Law

air, the expression "in flight" relates to the period from the moment when it becomes detached from the surface until it becomes again attached thereto.

Article 2

1. The liability for compensation contemplated by Article 1 of this Convention shall attach to the operator of the aircraft.

2. (*a*) For the purposes of this Convention the term "operator" shall mean the person who was making use of the aircraft at the time the damage was caused, provided that if control of the navigation of the aircraft was retained by the person from whom the right to make use of the aircraft was derived, whether directly or indirectly, that person shall be considered the operator.

(*b*) A person shall be considered to be making use of an aircraft when he is using it personally or when his servants or agents are using the aircraft in the course of their employment, whether or not within the scope of their authority.

3. The registered owner of the aircraft shall be presumed to be the operator and shall be liable as such unless, in the proceedings for the determination of his liability, he proves that some other person was the operator and, in so far as legal procedures permit, takes appropriate measures to make that other person a party in the proceedings.

Article 3

If the person who was the operator at the time the damage was caused had not the exclusive right to use the aircraft for a period of more than fourteen days, dating from the moment when the right to use commenced, the person from whom such right was derived shall be liable jointly and severally with the operator, each of them being bound under the provisions and within the limits of liability of this Convention.

Article 4

If a person makes use of an aircraft without the consent of the person entitled to its navigational control, the latter, unless he proves that he has exercised due care to prevent such use, shall be jointly and severally liable with the unlawful user for damage giving a right to compensation under Article 1, each of them being bound under the provisions and within the limits of liability of this Convention.

Article 5

Any person who would otherwise be liable under the provisions of this Convention shall not be liable if the damage is the direct consequence of armed conflict or civil disturbance, or if such person has been deprived of the use of the aircraft by act of public authority.

A 78

Exhibit I(a) Annexed to Plaintiffs' Supporting Memorandum of Law

Article 6

1. Any person who would otherwise be liable under the provisions of this Convention shall not be liable for damage if he proves that the damage was caused solely through the negligence or other wrongful act or omission of the person who suffers the damage or of the latter's servants or agents. If the person liable proves that the damage was contributed to by the negligence or other wrongful act or omission of the person who suffers the damage, or of his servants or agents, the compensation shall be reduced to the extent to which such negligence or wrongful act or omission contributed to the damage. Nevertheless there shall be no such exoneration or reduction if, in the case of the negligence or other wrongful act or omission of a servant or agent, the person who suffers the damage proves that his servant or agent was acting outside the scope of his authority.

2. When an action is brought by one person to recover damages arising from the death or injury of another person, the negligence or other wrongful act or omission of such other person, or of his servants or agents, shall also have the effect provided in the preceding paragraph.

Article 7

When two or more aircraft have collided or interfered with each other in flight and damage for which a right to compensation as contemplated in Article 1 results, or when two or more aircraft have jointly caused such damage, each of the aircraft concerned shall be considered to have caused the damage and the operator of each aircraft shall be liable, each of them being bound under the provisions and within the limits of liability of this Convention.

Article 8

The persons referred to in paragraph 3 of Article 2 and in Articles 3 and 4 shall be entitled to all defences which are available to an operator under the provisions of this Convention.

Article 9

Neither the operator, the owner, any person liable under Article 3 or Article 4, nor their respective servants or agents, shall be liable for damage on the surface caused by an aircraft in flight or any person or thing falling therefrom otherwise than as expressly provided in this Convention. This rule shall not apply to any such person who is guilty of a deliberate act or omission done with intent to cause damage.

Article 10

Nothing in this Convention shall prejudice the question whether a person liable for damage in accordance with its provisions has a right of recourse against any other person.

A 79

EXHIBIT I(b)--CONVENTION, SUPPLEMENTARY TO THE WARSAW CONVENTION, FOR THE UNIFICATION OF CERTAIN RULES RELATING TO INTERNATIONAL CARRIAGE BY AIR PERFORMED BY A PERSON OTHER THAN THE CONTRACTING CARRIER. SIGNED AT GUADALAJARA, ON 18 SEPTEMBER 1961, 500 U.N.J.S. 31 (SELECTED PAGES) ANNEXED TO PLAINTIFFS' SUPPORTING MEMORANDUM OF LAW

No. 7305. CONVENTION,[1] SUPPLEMENTARY TO THE WARSAW CONVENTION,[2] FOR THE UNIFICATION OF CERTAIN RULES RELATING TO INTERNATIONAL CARRIAGE BY AIR PERFORMED BY A PERSON OTHER THAN THE CONTRACTING CARRIER. SIGNED AT GUADALAJARA, ON 18 SEPTEMBER 1961

The States signatory to the present Convention

Noting that the Warsaw Convention does not contain particular rules relating to international carriage by air performed by a person who is not a party to the agreement for carriage

Considering that it is therefore desirable to formulate rules to apply in such circumstances

Have agreed as follows :

Article I

In this Convention :

a) "Warsaw Convention" means the Convention for the Unification of Certain Rules Relating to International Carriage by Air signed at Warsaw on 12 October 1929,[2] or the Warsaw Convention as amended at The Hague, 1955,[3] according to whether the carriage under the agreement referred to in paragraph *b*) is governed by the one or by the other;

b) "contracting carrier" means a person who as a principal makes an agreement for carriage governed by the Warsaw Convention with a passenger or consignor or with a person acting on behalf of the passenger or consignor;

[1] In accordance with article XIII (1), the Convention came into force on 1 May 1964, the ninetieth day after the date of deposit of the fifth instrument of ratification, in respect of the following States which deposited their instruments of ratification with the Government of Mexico on the dates indicated :

Mexico	16 May	1962
United Kingdom of Great Britain and Northern Ireland	4 September	1962
Australia	1 November	1962
France	24 January	1964
Switzerland	1 February	1964

Subsequently, the Convention entered into force in respect of the Netherlands and the Federal Republic of Germany on 25 and 31 May 1964, respectively, the said States having deposited their instruments of ratification on 25 February and 2 March 1964 respectively.

[2] League of Nations, *Treaty Series*, Vol. CXXXVII, p. 11; Vol. CXLII, p. 393; Vol. CXLVII, p. 355; Vol. CLVI, p. 258; Vol. CLX, p. 418; Vol. CLXIV, p. 395; Vol. CLXXII, p. 425; Vol. CLXXVII, p. 420; Vol. CLXXXI, p. 397; Vol. CLXXXV, p. 406; Vol. CXCIII, p. 273; Vol. CXCVI, p. 422, and United Nations, *Treaty Series*, Vol. 261, p. 423, and Vol. 266, p. 444.

[3] United Nations, *Treaty Series*, Vol. 478, p. 371.

A 80

Exhibit I(b) Annexed to Plaintiffs' Supporting Memorandum of Law

c) "actual carrier" means a person, other than the contracting carrier, who, by virtue of authority from the contracting carrier, performs the whole or part of the carriage contemplated in paragraph *b*) but who is not with respect to such part a successive carrier within the meaning of the Warsaw Convention. Such authority is presumed in the absence of proof to the contrary.

Article II

If an actual carrier performs the whole or part of carriage which, according to the agreement referred to in Article I, paragraph *b*), is governed by the Warsaw Convention, both the contracting carrier and the actual carrier shall, except as otherwise provided in this Convention, be subject to the rules of the Warsaw Convention, the former for the whole of the carriage contemplated in the agreement, the latter solely for the carriage which he performs.

Article III

1. The acts and omissions of the actual carrier and of his servants and agents acting within the scope of their employment shall, in relation to the carriage performed by the actual carrier, be deemed to be also those of the contracting carrier.

2. The acts and omissions of the contracting carrier and of his servants and agents acting within the scope of their employment shall, in relation to the carriage performed by the actual carrier, be deemed to be also those of the actual carrier. Nevertheless, no such act or omission shall subject the actual carrier to liability exceeding the limits specified in Article 22 of the Warsaw Convention. Any special agreement under which the contracting carrier assumes obligations not imposed by the Warsaw Convention or any waiver of rights conferred by that Convention or any special declaration of interest in delivery at destination contemplated in Article 22 of the said Convention, shall not affect the actual carrier unless agreed to by him.

Article IV

Any complaint to be made or order to be given under the Warsaw Convention to the carrier shall have the same effect whether addressed to the contracting carrier or to the actual carrier. Nevertheless, orders referred to in Article 12 of the Warsaw Convention shall only be effective if addressed to the contracting carrier.

Article V

In relation to the carriage performed by the actual carrier, any servant or agent of that carrier or of the contracting carrier shall, if he proves that he acted within the scope of his employment, be entitled to avail himself of the limits

of liability which are applicable under this Convention to the carrier whose servant or agent he is unless it is proved that he acted in a manner which, under the Warsaw Convention, prevents the limits of liability from being invoked.

Article VI

In relation to the carriage performed by the actual carrier, the aggregate of the amounts recoverable from that carrier and the contracting carrier, and from their servants and agents acting within the scope of their employment, shall not exceed the highest amount which could be awarded against either the contracting carrier or the actual carrier under this Convention, but none of the persons mentioned shall be liable for a sum in excess of the limit applicable to him.

Article VII

In relation to the carriage performed by the actual carrier, an action for damages may be brought, at the option of the plaintiff, against that carrier or the contracting carrier, or against both together or separately. If the action is brought against only one of those carriers, that carrier shall have the right to require the other carrier to be joined in the proceedings, the procedure and effects being governed by the law of the court seised of the case.

Article VIII

Any action for damages contemplated in Article VII of this Convention must be brought, at the option of the plaintiff, either before a court in which an action may be brought against the contracting carrier, as provided in Article 28 of the Warsaw Convention, or before the court having jurisdiction at the place where the actual carrier is ordinarily resident or has his principal place of business.

Article IX

1. Any contractual provision tending to relieve the contracting carrier or the actual carrier of liability under this Convention or to fix a lower limit than that which is applicable according to this Convention shall be null and void, but the nullity of any such provision does not involve the nullity of the whole agreement, which shall remain subject to the provisions of this Convention.

2. In respect of the carriage performed by the actual carrier, the preceding paragraph shall not apply to contractual provisions governing loss or damage resulting from the inherent defect, quality or vice of the cargo carried.

3. Any clause contained in an agreement for carriage and all special agreements entered into before the damage occurred by which the parties purport to infringe

EXHIBIT I(c)--GUATEMALA CITY PROTOCOL. PROTOCOL TO AMEND THE CONVENTION FOR THE UNIFICATION OF CERTAIN RULES RELATING TO INTERNATIONAL CARRIAGE BY AIR SIGNED AT WARSAW ON 12 OCTOBER 1929 AS AMENDED BY THE PROTOCOL DONE AT THE HAGUE ON 28 SEPTEMBER 1955, A. LOWENFELD, AVIATION LAW DOCUMENTS SUPPLEMENT, 435 ANNEXED TO PLAINTIFFS' SUPPORTING MEMORANDUM OF LAW

GUATEMALA CITY PROTOCOL

PROTOCOL TO AMEND THE CONVENTION FOR THE UNIFICATION OF CERTAIN RULES RELATING TO INTERNATIONAL CARRIAGE BY AIR SIGNED AT WARSAW ON 12 OCTOBER 1929 AS AMENDED BY THE PROTOCOL DONE AT THE HAGUE ON 28 SEPTEMBER 1955

The GOVERNMENTS UNDERSIGNED

CONSIDERING that it is desirable to amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air signed at Warsaw on 12 October 1929 as amended by the Protocol done at The Hague on 28 September 1955,

HAVE AGREED as follows:

CHAPTER I

AMENDMENTS TO THE CONVENTION

Article I

The Convention which the provisions of the present Chapter modify is the Warsaw Convention as amended at The Hague in 1955.

Article II

Article 3 of the Convention shall be deleted and replaced by the following:—

"Article 3

1. In respect of the carriage of passengers an individual or collective document of carriage shall be delivered containing:

a) an indication of the places of departure and destination;

b) if the places of departure and destination are within the territory of a single High Contracting Party, one or more agreed stopping places being within the territory of another State, an indication of at least one such stopping place.

2. Any other means which would preserve a record of the information indicated in a) and b) of the foregoing paragraph may be substituted for the delivery of the document referred to in that paragraph.

3. Non-compliance with the provisions of the foregoing paragraphs shall not affect the existence or the validity of

Exhibit I(c) Annexed to Plaintiffs' Supporting Memorandum of Law

Article XI

In Article 25 A of the Convention—

paragraphs 1 and 3 shall be deleted and replaced by the following:

"1. If an action is brought against a servant or agent of the carrier arising out of damage to which the Convention relates, such servant or agent, if he proves that he acted within the scope of his employment, shall be entitled to avail himself of the limits of liability which that carrier himself is entitled to invoke under this Convention.

3. The provisions of paragraphs 1 and 2 of this Article shall not apply to the carriage of cargo if it is proved that the damage resulted from an act or omission of the servant or agent done with intent to cause damage or recklessly and with knowledge that damage would probably result."

Article XII

In Article 28 of the Convention—

the present paragraph 2 shall be renumbered as paragraph 3 and a new paragraph 2 shall be inserted as follows:

"2. In respect of damage resulting from the death, injury or delay of a passenger or the destruction, loss, damage or delay of baggage, the action may be brought before one of the Courts mentioned in paragraph 1 of this Article, or in the territory of one of the High Contracting Parties, before the Court within the jurisdiction of which the carrier has an establishment if the passenger has his domicile or permanent residence in the territory of the same High Contracting Party."

Article XIII

After Article 30 of the Convention, the following Article shall be inserted:—

"Article 30 A

Nothing in this Convention shall prejudice the question whether a person liable for damage in accordance with its provisions has a right of recourse against any other person."

Article XIV

After Article 35 of the Convention, the following Article shall be inserted:—

"Article 35 A

No provision contained in this Convention shall prevent a State from establishing and operating within its territory a system to supplement the compensation payable to claimants under the Convention in respect of death, or personal injury, of passengers. Such a system shall fulfil the fol-

EXHIBIT J--CONVENTION FOR THE UNIFICATION OF CERTAIN RULES RELATING TO INTERNATIONAL TRANSPORTATION BY AIR, DONE AT WARSAW 29 OCTOBER 1929, 49 STAT. 3000; T.S. 876 (CHAPTER 3) ANNEXED TO PLAINTIFFS' SUPPORTING MEMORANDUM OF LAW

CHAPTER III. LIABILITY OF THE CARRIER

Article 17

The carrier shall be liable for damage sustained in the event of the death or wounding of a passenger or any other bodily injury suffered by a passenger, if the accident which caused the damage so sustained took place on board the aircraft or in the course of any of the operations of embarking or disembarking.

Article 18

(1) The carrier shall be liable for damage sustained in the event of the destruction or loss of, or of damage to, any checked baggage or any goods, if the occurrence which caused the damage so sustained took place during the transportation by air.

(2) The transportation by air within the meaning of the preceding paragraph shall comprise the period during which the baggage or goods are in charge of the carrier, whether in an airport or on board an aircraft, or, in the case of a landing outside an airport, in any place whatsoever.

(3) The period of the transportation by air shall not extend to any transportation by land, by sea, or by river performed outside an airport. If, however, such transportation takes place in the performance of a contract for transportation by air, for the purpose of loading, delivery or transshipment, any damage is presumed, subject to proof to the contrary, to have been the result of an event which took place during the transportation by air.

Article 19

The carrier shall be liable for damage occasioned by delay in the transportation by air of passengers, baggage, or goods.

Article 20

(1) The carrier shall not be liable if he proves that he and his agents have taken all necessary measures to avoid the damage or that it was impossible for him or them to take such measures.

(2) In the transportation of goods and baggage the carrier shall not be liable if he proves that the damage was occasioned by an error in piloting, in the handling of the aircraft, or in navigation and that, in all other respects, he and his agents have taken all necessary measures to avoid the damage.

Article 21

If the carrier proves that the damage was caused by or contributed to by the negligence of the injured person the court may, in accordance with the provisions of its own law, exonerate the carrier wholly or partly from his liability.

Article 22

(1) In the transportation of passengers the liability of the carrier for each passenger shall be limited to the sum of 125,000 francs. Where, in accordance with the law of the court to which the case is submitted, damages may be awarded in the form of periodical payments, the equivalent capital value of the said payments shall not exceed 125,000 francs. Nevertheless, by special contract, the carrier and the passenger may agree to a higher limit of liability.

(2) In the transportation of checked baggage and of goods, the liability of the carrier shall be limited to a sum of 250 francs per kilogram, unless the consignor has made, at the time when the package was handed over to the carrier, a special declaration of the value at delivery and has paid a supplementary sum if the case so requires. In that case the carrier will be liable to pay a sum not exceeding the declared sum, unless he proves that that sum is greater than the actual value to the consignor at delivery.

(3) As regards objects of which the passenger takes charge himself the liability of the carrier shall be limited to 5,000 francs per passenger.

(4) The sums mentioned above shall be deemed to refer to the French franc consisting of 65½ milligrams of gold at the standard of fineness of nine hundred thousandths. These sums may be converted into any national currency in round figures.

Article 23

Any provision tending to relieve the carrier of liability or to fix a lower limit than that which is laid down in this convention shall be null and void, but the nullity of any such provision shall not involve the nullity of the whole contract, which shall remain subject to the provisions of this convention.

Article 24

(1) In the cases covered by articles 18 and 19 any action for damages, however founded, can only be brought subject to the conditions and limits set out in this convention.

(2) In the cases covered by article 17 the provisions of the preceding paragraph shall also apply, without prejudice to the questions as to who are the persons who have the right to bring suit and what are their respective rights.

Article 25

(1) The carrier shall not be entitled to avail himself of the provisions of this convention which exclude or limit his liability, if the damage is caused by his wilful misconduct or by such default on his part as, in accordance with the law of the court to which the case is submitted, is considered to be equivalent to wilful misconduct.

(2) Similarly the carrier shall not be entitled to avail himself of the said provisions, if the damage is caused under the same circumstances by any agent of the carrier acting within the scope of his employment.

Article 26

(1) Receipt by the person entitled to the delivery of baggage or goods without complaint shall be *prima facie* evidence that the same have been delivered in good condition and in accordance with the document of transportation.

(2) In case of damage, the person entitled to delivery must complain to the carrier forthwith after the discovery of the damage, and, at the latest, within 3 days from the date of receipt in the case of baggage and 7 days from the date of receipt in the case of goods. In case of delay the complaint must be made at the latest within 14 days from the date on which the baggage or goods have been placed at his disposal.

(3) Every complaint must be made in writing upon the document of transportation or by separate notice in writing dispatched within the times aforesaid.

(4) Failing complaint within the times aforesaid, no action shall lie against the carrier, save in the case of fraud on his part.

Article 27

In the case of the death of the person liable, an action for damages lies in accordance with the terms of this convention against those legally representing his estate.

Article 28

(1) An action for damages must be brought, at the option of the plaintiff, in the territory of one of the High Contracting Parties, either before the court of the domicile of the carrier or of his principal place of business, or where he has a place of business through which the contract has been made, or before the court at the place of destination.

(2) Questions of procedure shall be governed by the law of the court to which the case is submitted.

Article 29

(1) The right to damages shall be extinguished if an action is not brought within 2 years, reckoned from the date of arrival at the destination, or from the date on which the aircraft ought to have arrived, or from the date on which the transportation stopped.

(2) The method of calculating the period of limitation shall be determined by the law of the court to which the case is submitted.

Article 30

(1) In the case of transportation to be performed by various successive carriers and falling within the definition set out in the third paragraph of article 1, each carrier who accepts passengers, baggage or goods shall be subject to the rules set out in this convention, and shall be deemed to be one of the contracting parties to the contract of transportation insofar as the contract deals with that part of the transportation which is performed under his supervision.

(2) In the case of transportation of this nature, the passenger or his representative can take action only against the carrier who performed the transportation during which the accident or the delay occurred, save in the case where, by express agreement, the first carrier has assumed liability for the whole journey.

(3) As regards baggage or goods, the passenger or consignor shall have a right of action against the first carrier, and the passenger or consignee who is entitled to delivery shall have a right of action against the last carrier, and further, each may take action against the carrier who performed the transportation during which the destruction, loss, damage, or delay took place. These carriers shall be jointly and severally liable to the passenger or to the consignor or consignee.

CHAPTER IV. PROVISIONS RELATING TO COMBINED TRANSPORTATION

Article 31

(1) In the case of combined transportation performed partly by air and partly by any other mode of transportation, the provisions of this convention shall apply only to the transportation by air, provided that the transportation by air falls within the terms of article 1.

(2) Nothing in this convention shall prevent the parties in the case of combined transportation from inserting in the document of air transportation conditions relating to other modes of transportation, provided that the provisions of this convention are observed as regards the transportation by air.

CHAPTER V. GENERAL AND FINAL PROVISIONS

Article 32

Any clause contained in the contract and all special agreements entered into before the damage occurred by which the parties purport to infringe the rules laid down by this convention, whether by deciding the law to be applied, or by altering the rules as to jurisdiction, shall be null and void. Nevertheless for the transportation of goods arbitration clauses shall be allowed, subject to this convention, if the arbitration is to take place within one of the jurisdictions referred to in the first paragraph of article 28.

Article 33

Nothing contained in this convention shall prevent the carrier either from refusing to enter into any contract of transportation or from making regulations which do not conflict with the provisions of this convention.

Article 34

This convention shall not apply to international transportation by air performed by way of experimental trial by air navigation enter-

to determine and it means so many more controversies will arise.

Moreover, it is clear that the carrier, from the moment when he remains exposed to these risks, will certainly refrain from adding a free insurance policy to the ticket, he usually delivers.

And so, while your intention was to give the client a supplementary guarantee, you shall obtain the opposite result, that is a decrease of guarantee. The client instead of having an insurance in all cases, will only have the recourse of a long difficult suit, with the burden of a certain number of proofs which are equally hard to establish. In short, you will have a regime which will not be clear-cut.

That is why the French Delegation insists, at this meeting, to have the 2 paragraphs of Article 22 altered. I apologize for speaking of the question of fault proper and of the question of passengers transport at the same time because, in fact, it is the same question. It concerns the creation of an exoneration of liability with regard to the carrier, a regime which would be clear for him and for the client.

Sir Alfred Dennis - (Great Britain). - I believe that the amendment of the Delegation of the USSR is not in

accord with the amendment of the French Delegation, nor with that of Great Britain.

The Russian Delegation wants to remove paragraph 2 in its entirety and to keep only the first pilot's error, a navigational error, the carrier is responsible for the fact that his agents have not taken the reasonable precautions. The effect of this amendment, if I understand it correctly, is contrary to the French and British amendments.

The French and British amendments do not aim at suppressing the 2nd paragraph, but wish to extend it to all the cases, to all the transports.

Then, I believe, we should put to a vote the Russian amendment, separately. After that, I wish to add a few words to what has been said by Mr. Flandin.

The exception of navigational errors of the command of the aircraft, at first glance, does not seem to be in accord with common law, because under common law, a carrier is generally responsible for the errors of his agents; but under maritime law, one has always or almost always inserted in the contracts an exception which protects the carrier in case of navigational error comitted by the captain or the crew.

Why this exception in maritime law? I suppose that with time it was noted that maritime operations are of such a difficult, such a delicate nature, that everyone agreed to say that it was not fair to impose on the maritime carriers the responsibility of errors committed by the captains.

This provision has been adopted, namely at the maritime conference at the Hague; it has also been adopted in our first draft drawn up in 1925. But in that convention as well as in others, since 1925, the tendency has been to make the carrier's liability heavier and heavier. Among others, this is what is being done in this first point; similarly, one admits the liability of the carrier in case of defect of the aircraft, and, besides, the amount is raised financially of the limit of liability. In this way then, the carrier's responsibility is seriously increased. In my opinion or rather in the opinion of my government it is difficult to separate these three different points. It must be considered that the liability of the carrier is provided for and regulated by the Articles 22,23,24 and 25. I may say that the principle presently adopted by our government is to consider that these questions must be settled by the free will of the parties. In the convention, we wish to replace the regime of free wish by

of transportation and that the law best known of the contracting parties shall be that of the state, where the contract has been signed and not the law, of the country where the accident occurs.

Mr. Ambrosini (Italy). With regard to the statement of Professor Ripert, who suggested to refer to the editing committee the question of intentional illicit acts, I would like to suggest to the conference, that there is a formula which might be more equitable than those submitted heretofore. We could say that the carrier shall beliable for his agents' intentional illicit acts, when such acts are directly tied to his functions and to the instructions of the carrier. For example, the pilot who kills a passenger commits an intentional illicit act which has no connection with his functions and the instructions of the carrier. But if the employee in charge of luggage commits a theft, doubtless the carrier is liable.

In sum, the illicit act must be directly connected with the fulfilling of the contract.

Mr. Giannini (Italy). We agree with the proposal

of the French Delegation on the substance, save the finding of a wording, as Mr. Ripert has suggested.

But, on the other hand, for the reasons already given by Sir Alfred Dennis himself, i.e., the necessity of establishing uniform rules, we oppose the referral to national legislation.

Mr. De Vos, Rapporteur. Mr. Ambrosini's proposal might satisfy Sir Alfred Dennis: the act which caused the damage must be directly connected to the transportation, i.e., to the functions of the person who committed the act.

Mr. Arendt (Luxemburg). There is a formula which is commonly used in such circumstances and could satisfy the British Delegation: the act must have been committed in the discharge of the functions. But of course, it is a question of editing.

Mr. Clarke (Great Britain). The difficulty is not in the words: "...for which the carrier is liable." This we understand, because, according to our law, it is a well-known thing that, in certain circumstances the employer assume the liability for the acts of his employees, even when the act of his employee is a crime.

What bothers us is the precise meaning of the words "intentional illicit act."

Besides, what we are saying is that if the employer must be liable, in certain cases, for the acts of his employees, it must be decided which law will govern this question. For example, English law may decide that in such a case the employer is liable, while French law will say the opposite, and vice versa, it must say, then, in the convention, which law shall apply.

Consequently, we have before us two questions: to know exactly the meaning of "intentional illicit act" and we have a suggestion to that effect - and then, to indicate which law shall decide, if the liability of the employer is involved or not.

Here are the two questions to be resolved.

Mr. Ambrosini (Italy). We want the convention to apply in all cases; therefore I suggested the formula which has been adopted; of course, we could find something more precise, but it is a question for the editing committee.

At any rate we must put aside the recourse to national law.

Sir Alfred Dennis (Great Britain). We thought that a formula should be found which would safeguard all

rights, avoid all doubts. This is why we suggested that the law which should apply in such case would be the law of the state where the contract was concluded, or any other law you wish, but the convention must fix the law which shall determine the liability or non-liability of the carrier, because it will be very difficult to find a law which will be accepted by all countries; maybe we are wrong, but we do not think so.

The President. Does anyone still wish the floor, on this question?

Then, I believe we have before us two proposals: the British proposal, and the French proposal. The proposal of the French Delegation, as presented by Mr. Ripert, is the referral to the editing committee.

Mr. Ripert (France). We shall make every effort to find a satisfactory formula, but it is understood, as of now, that we are absolutely opposed to a formula which would have the national law applied. It is the first time that application of the national law is requested and if we allowed it on this question, it would be requested on others.

proposed for the maritime convention, my Government, which studied the question, set aside the proposal aiming at the insertion of a clause of this type, because it felt that it opened numerous breaches in the convention and permitted all evasions.

The object of this convention is to insure the uniformity of law, and should we insert such a clause, many evasions of the convention would result.

Mr. Sabanine (USSR) - I would like to support the suggestion of our British colleague. We are agreed to recognize that it would be a very wide door opened in the convention.

In this convention, it is spoken of provisions of civil law; now this article seems to me to be based on considerations of public law and this is food for thought.

May I call your attention to the last sentence of the amendment proposed: "....nor to the transports executed under exceptional circumstances outside the normal operations of air exploitation." It seems to me that this might require the consent of the passenger not to benefit from the clauses of the convention.

Mr. Pittard - (Switzerland) Does this article mean that if the convention is not applied in this case, common law shall be applied.

Mr. Ripert - (France) - Of course!

Mr. Pittard - (Switzerland) - Common law which is more rigid than the law of the convention.

Mr. Ripert - (France) - No.

(596.50)

Mr. Pittard - (Switzerland), - Then you are going to apply, for unfortunate cases, a law more terrible than the other, since the Convention limits liability to a sum of so much for passengers and for goods, here the limitation shall no longer exist. I am not opposed to the principle which is at the basis of the proposal, i.e. that we cannot demand the formalities of the convention in certain cases which we deem exceptional. If a plane goes to rescue passengers and goods abandoned by a damaged aircraft on some field, one can not demand an air waybill, a baggage check: that is understood. But should we not allow this aircraft to benefit from the convention? I believe we should.

Then, maybe this is not the formula we should take, but say that the formal exigencies of the convention may be eliminated in exceptional cases, or, it is at the time the formalities are imposed that we shall say that exception shall be made in such and such cases.

I do not agree for the questions of experiments on the lines where no plane has flown before, because if there are experiments, there has been a preparation and you can take precises provisions; but I believe that exceptions should be left for truly exceptional cases, i.e. the fortuitous case, the case of major force, when they play a part.

Be very careful though; by not wanting to apply the convention you are going to apply to these unfortunate who deserve all our pity a law more rigorous than that of the convention.

Mr. Ripert - (France) - I am amazed at the opposition of the

Delegate from Great Britain, because this provision is borrowed from English law and from a convention drawn up in England.

When a convention was concluded for maritime transportation, it was recognized that there were exceptional circumstances under which the rules one wanted to impose could not be applied.

Take the case of a French plane which falls in the mountains of the Spanish Riff: it is necessary to make a transport to save the passengers and the goods; do you claim that you can apply to this transport the rules of the convention?

Mr. Pittard says that common law is more severe than the convention; for you, perhaps, but not for us!

Mr. Pittard - (Switzerland). - But for me it is sufficient!

Mr. Ripert - (France) - In many countries the clause of absolute exoneration exists; it must be left to those countries, where this rule exists, to have the possibility of developing their rule in these exceptional circumstances!

As for the experimental flights, can you claim that you can demand the application of the convention for uncertain lines, when, for instance, one is attempting to create a route crossing the Sahara, or even a line going to Indo-China? In order to make these experiments, one even takes on merchandise free of charge. According to the definition of Article I of the convention, we fall under the application of that convention.

59)

We imagine too easily that we might create a ruling in favor of the carrier. In many countries the rules of the convention are more rigorous.

Mr. Pittard (Switzerland). No! No!

Mr. Ripert (France). I am not recommending especially the formula of the French Delegation." We shall examined all the formulas you shall want to present, but you shall be convinced, as we are, that by not creating any exceptions we shall write an inapplicable convention, and it is better, rather than ratifying the violations of the convention, to first authorize them.

Mr. Pittard (Switzerland). I believe there is a question of principle: this is a return to national law.

Mr. Ripert (France). Yes, certainly.

Mr. Pittard (Switzerland). What we wish to achieve is a harmony of legislation.

You do not want to force us, because we are a small country, to change all our legislation, because yours does not correspond? I say this to you in all friendliness, of course. Only, if, with Mr. Ripert's system, we find ourselves outside of the convention, how are the cases going to be settled? Shall it be national law? In our country it is very rigorous. We should say: "However, within the limits of the convention..." But I repeat it is not in the part dealing with liability itself but a propos of the contract of transportation that we must speak to this question.

Mr. Ripert (France). We are quite willing to achieve unity of law in the interest of commercial transportation, but we have no interest in having juridical conceptions imposed on us that we do not know, for these exceptional transports.

The President. Does anyone wish the floor?

We shall proceed with the vote. I put to a vote the principle of the French proposal, it being understood that the wording shall be entrusted to the editing committee. We shall vote by states. (Result of the vote: For...19 votes; against..4 votes; abstentions. 2. Voted for :Germany, Austria, Belgium, Brazil, Denmark, Spain, Estonia, France, Hellenic Republic, Italy, Japan, Luxemburg, Mexico, Netherlands, Poland, Switzerland, Czechoslovakia, Yugoslavia. Voted

against: Egypt, Great Britain, Union of South Africa, Australia. Abstained: Norway, USSR).

The President: The French proposal is then accepted by 19 votes, against 4 and 2 abstentions.

We now move on to Chapter III (paragraph). Limits of the liability.

We have before us a French amendment: reduction of the amount for goods (Article 23, Paragraph 2). The amendment of the French Delegation reads as follows:

"The liability of the carrier is limited to the sum of 125,000 francs per passenger.... Besides, it is suggested that we remove from paragraph 4 of the same article the sentence: "The values above are values in gold."

The Rapporteur has the floor.

Mr. De Vos Rapporteur. We approach the third category of ideas which concern the limitation of liability from a different angle.

The French proposal consists in reducing the limit of liability for goods. Besides, the French proposal consists in modifying, for passengers, the liability of the carrier by converting the sum of 25,000 gold francs into the value of the present French currency, that is 125,000 francs. This proposal is the result of the stabilization of the French currency which has occurred since the text was written.

The same modification brings about quite naturally

the suppression of the sentence: "The values above are values in gold."

The consequence, for goods, is that by maintaining the sum of 100 francs per kilo, which become 100 stabilized French francs, the maximum value of the liability for goods is reduced.

The same observation had been made in my country and both as Rapporteur and as Delegate from Belgium, I support this French proposal. I remind you that it consists in taking, for goods, as limit of liability, 100 French francs per kilo for goods, and for the passengers 125,000 French francs.

Mr. Ripert (France). I do not have much to add to what the Rapporteur has just said.

The modification requested in merely a matter of form. The text had been written before the French stabilization. The following was added: the values above are valued in gold.

Since there is a new definition of the French franc, so that the text would be correct, one must take the French franc, which should be the gold franc multiplied by five. It is a simple question of wording. This is for the passengers.

But for the goods, the companies of air navigation called our attention to the fact that the figure of 100 gold francs per kilo, formerly fixed, or 500 French francs, was too

Affidavit of Edward M. O'Brien, in Opposition to Motion.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

AFFIDAVIT IN OPPOSITION TO MOTION

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

EDWARD M. O'BRIEN, being duly sworn deposes and says:

1. That he is an attorney admitted to practice before this Court and he is associated with the firm of Bigham Englar Jones & Houston, attorneys for the defendants herein and as such he is fully familiar with all the pleadings and proceedings heretofore had herein. He submits this affidavit in opposition to plaintiffs' motion to (1) strike that portion of defendants' answer, the Second Affirmative Defense, which pleads the limitation of liability provisions of the Warsaw Convention as amended by the Montreal Agreement, or, in the alternative, (2) for partial summary judgment in plaintiffs' favor with respect to said Second Defense and (3) in support of defendants' contention that they are entitled to summary judgment dismissing the complaint for the reasons hereinafter stated and those set forth in defendants' Memorandum of Law in Opposition to plaintiffs' motion.

2. This action arises out of the crash of a Trans World Airlines, Inc. (TWA) flight 841 into the Ionian Sea on September 8, 1974 while enroute from Athens, Greece to

Rome, Italy. The aircraft crashed approximately 100 nautical miles west of Araxos, Peloponnesus, Greece because of, as alleged by plaintiffs, "a bomb or other explosive device was permitted to be placed or carried aboard said aircraft and exploded shortly after take-off causing the aircraft to crash into the Ionian Sea, thereby causing the death of all aboard." (Complaint, ¶ 6)

3. Plaintiffs further allege that defendants, Wiser and Neuman, in their respective capacities as President and Vice President of TWA, were responsible for the institution, operation and maintenance of a security system sufficient to prevent such devices from being carried aboard the aircraft by passengers; and it is further alleged that the crash of the TWA jet and the deaths of plaintiffs' decedents were caused by "defendants' [Wiser and Neuman] negligent failure to do so" (Complaint, ¶ 6). In its Memorandum of Law in support of their motion it is alleged on page two that "defendants' failure to install and maintain such a system was the cause of the deaths . . ." (Complaint, ¶¶ 4, 5 and 6). Such "failure to do so" is also alleged in the supporting affidavit, ¶ 6, page 3.

4. In their Answer to the Complaint the defendants Wiser and Neuman allege as a Second Defense the limiting provisions of the Warsaw Convention, as modified by the Montreal Agreement, to the effect that if defendants are liable at all to plaintiffs their liability is limited to the amount of $75,000 as set forth in the Montreal Agreement. Defendants also contend that certain International Passenger Rules Tariffs also governed and controlled the rights and obligations of the plaintiffs, the decedents and the defendants. Plaintiffs now move to have that defense dismissed.

5. Defendants contend that nothing in the Warsaw Convention nor in case law prevents the application of the limitation of liability to the officers and employees of the carrier, i.e., these defendants. This issue is discussed and argued in Point I of the accompanying memorandum of law in opposition to plaintiffs' motion and need not be argued here.

6. Defendants also contend that their only duty is to their principal (Trans World Airlines, Inc.) by whom they were employed at the relevant times herein, at TWA's main executive offices in New York City. At all times referred to in the complaint they were acting on behalf of their employer, TWA and that if they failed in any duty, which they have denied, it was in a duty owing only to their employer and not to any third-party (plaintiffs) to whom they assumed no obligations or responsibility, either express or implied. Plaintiffs have alleged negligence of defendants in their failure to perform certain acts, as indicated above. As is discussed and argued in Point III of defendants' memorandum of law in opposition, under such circumstances defendants cannot be held liable to plaintiffs for such failure, even if proven, since such a failure would be nonfeasance for which defendants cannot be held liable under the facts alleged in plaintiffs' complaint.

7. Defendants further submit that they are entitled to the protective provisions of the Warsaw Convention limitations by reason of the contract of carriage (ticket) entered into between the carrier TWA and the passengers referred to in the complaint and by reason of the provisions contained in the tariff filed by Trans World Airlines, Inc. with the Civil Aeronautics Board.

Paragraph 6 of the standard I.A.T.A. ticket contract of carriage which is used by Trans World Airlines, Inc.

provides that:

> "6. Any exclusion or limitation of liability of carrier shall apply to and be for the benefit of agents, servants and representatives of carrier and any person whose aircraft is used by carrier for carriage and its agents, servants and representatives."

See, Exhibit "J" to affidavit of Richard E. Neuman, Staff Vice President—Audit and Security, Trans World Airlines, Inc., which affidavit is annexed hereto and made part of deponent's affidavit. Mr. Neuman's affidavit also contains true copies of the passenger ticket coupons obtained from the nine passengers identified therein; those coupons are identified as Exhibits "A" through "I" of the Neuman affidavit.

In addition, similar language is contained in Rule 16(c) (12) of Passenger Rules Tariff No. R-3, which states:

> "(12) Any exclusion or limitation of liability of Carrier under this tariff or the ticket shall apply to agents, servants, or representatives of the Carrier acting within the scope of their employment and also to any person whose aircraft is used by the Carrier and its agents, servants or representatives acting within the scope of their employment."

A true copy of the entire TWA, Local and Joint International Passenger Rule Tariff No. R-3, which was in force and effect and was applicable to the transportation by air of the decedents alleged in this action, is annexed as Exhibit "A" to the affidavit of Richard H. Aime, Director-Tariff Development for Trans World Airlines, Inc. Mr. Aime's affidavit is annexed hereto and made part of deponent's affidavit.

Affidavit of Edward M. O'Brien.

Both the contract of carriage and Tariff No. R-3 incorporate the Warsaw and Montreal limitations. See, 14 C.F.R. Section 221.38(J).

8. It appears therefore that, independent of the Warsaw Convention, both by the conditions of the contract of carriage and the tariff provisions, employees of the carrier are also entitled to avail themselves of the limitation of liability under the Warsaw Convention. And, as is shown in Point II of Defendants' Memorandum of Law in opposition to plaintiffs' motion the provisions set forth in the ticket and tariff, supra, are valid and binding on decedents, and the plaintiffs in this action.

WHEREFORE, it is respectfully requested that plaintiffs' motion be denied in all respects and that the Court grant summary judgment to defendants dismissing the complaint together with costs and disbursements of this action, and, in the alternative, that defendants' liability, if any, be limited to the actual damage sustained but in no event to exceed $75,000.00 for each decedent.

s/ EDWARD M. O'BRIEN

(Sworn to December 22, 1975)

Affidavit of Richard E. Neuman, in Opposition to Motion.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

RICHARD E. NEUMAN, being duly sworn deposes and says:

That he is Staff Vice President-Audit and Security for Trans World Airlines, Inc., and a defendant in this action.

That attached hereto are true copies of the passenger ticket coupons obtained from nine passengers onboard TWA flight 841 on September 8, 1974 as follows:

1.	M. K. Orphan	Exhibit A
2.	Mrs. T. Orphan	Exhibit B
3.	M. E. Orphan	Exhibit C
4.	Dr. Dan Reed	Exhibit D
5.	J. Michel	Exhibit E
6.	Mrs. K. Michel	Exhibit F
7.	Mr. John Gilday	Exhibit G
8.	Mr. E. Bard	Exhibit H
9.	Mr. S. Bard	Exhibit I

That attached hereto (Exhibit J) is a true copy of the Conditions of Contract which were part of the ticket coupons of each of these passengers.

Paragraph 6 of the Conditions of Contract provides:

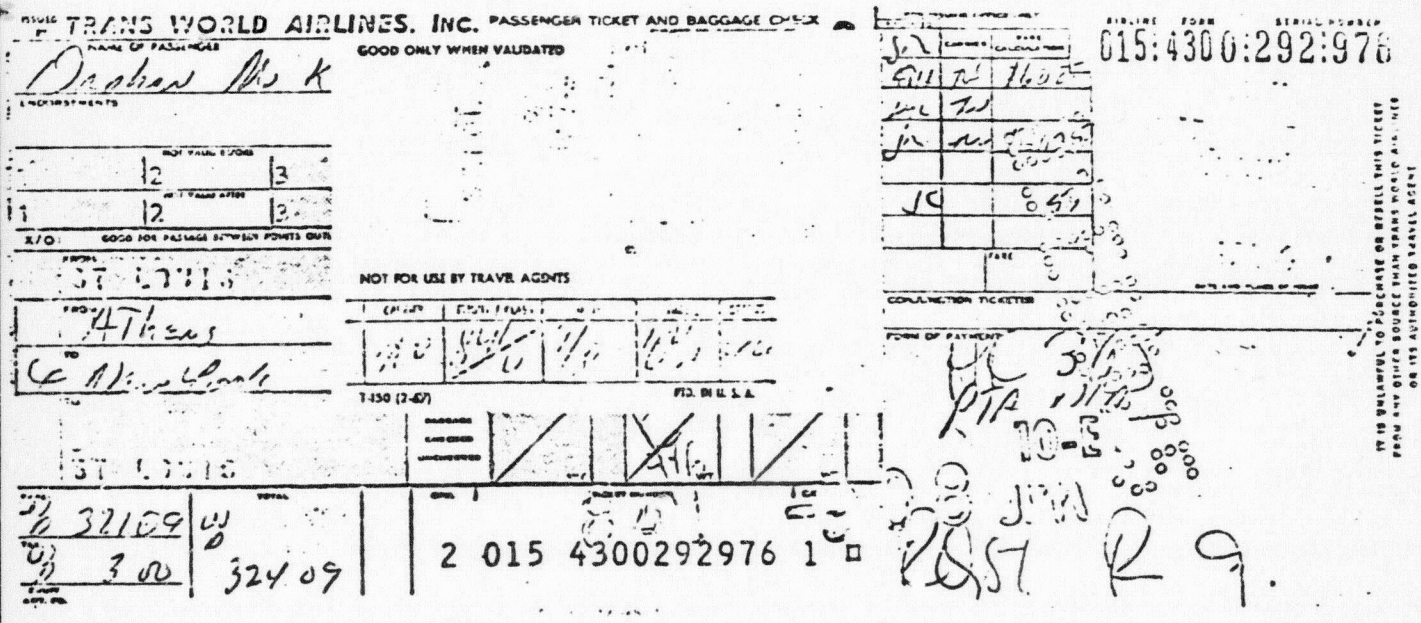
> "6. Any exclusion or limitation of liability of carrier shall apply to and be for the benefit of agents, servants and representatives of carrier and any person whose aircraft is used by carrier for carriage and its agents, servants and representatives."

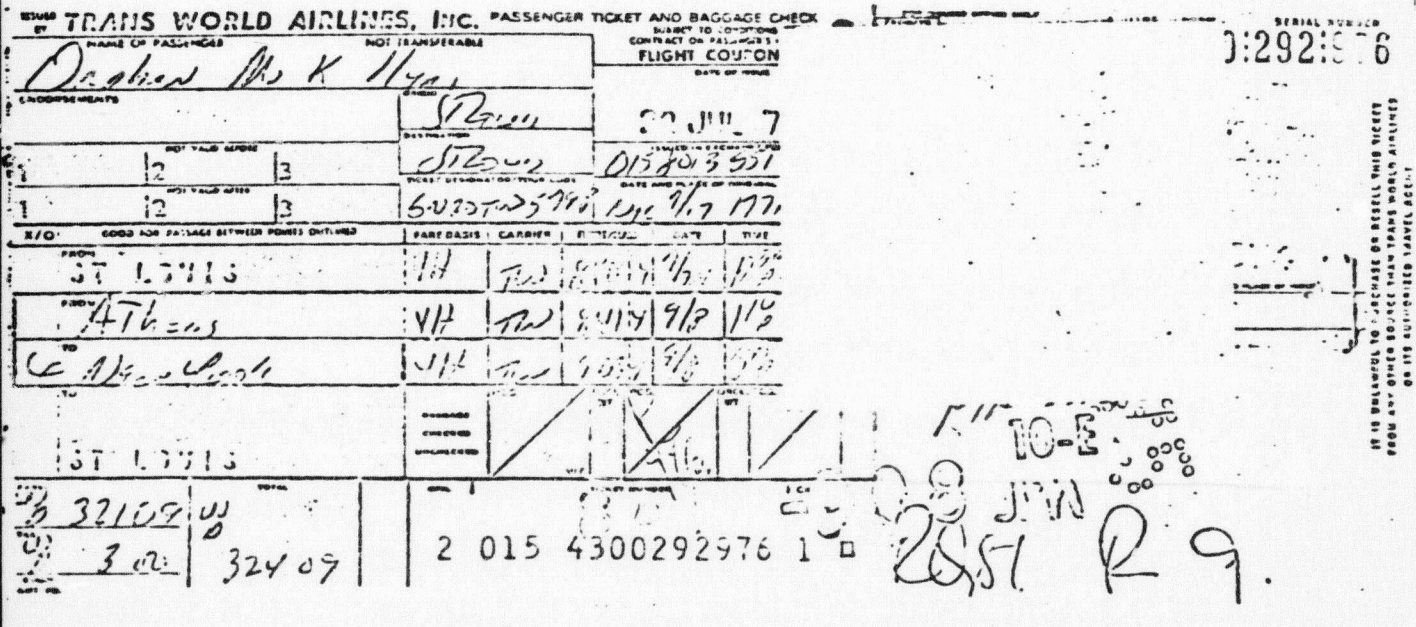
RICHARD E. NEUMAN

(Sworn to December 19, 1975.)

A 107

EXHIBIT A--PASSENGER TICKET COUPON (M. F. ORPHAN)
ANNEXED TO AFFIDAVIT OF RICHARD E. NEUMAN

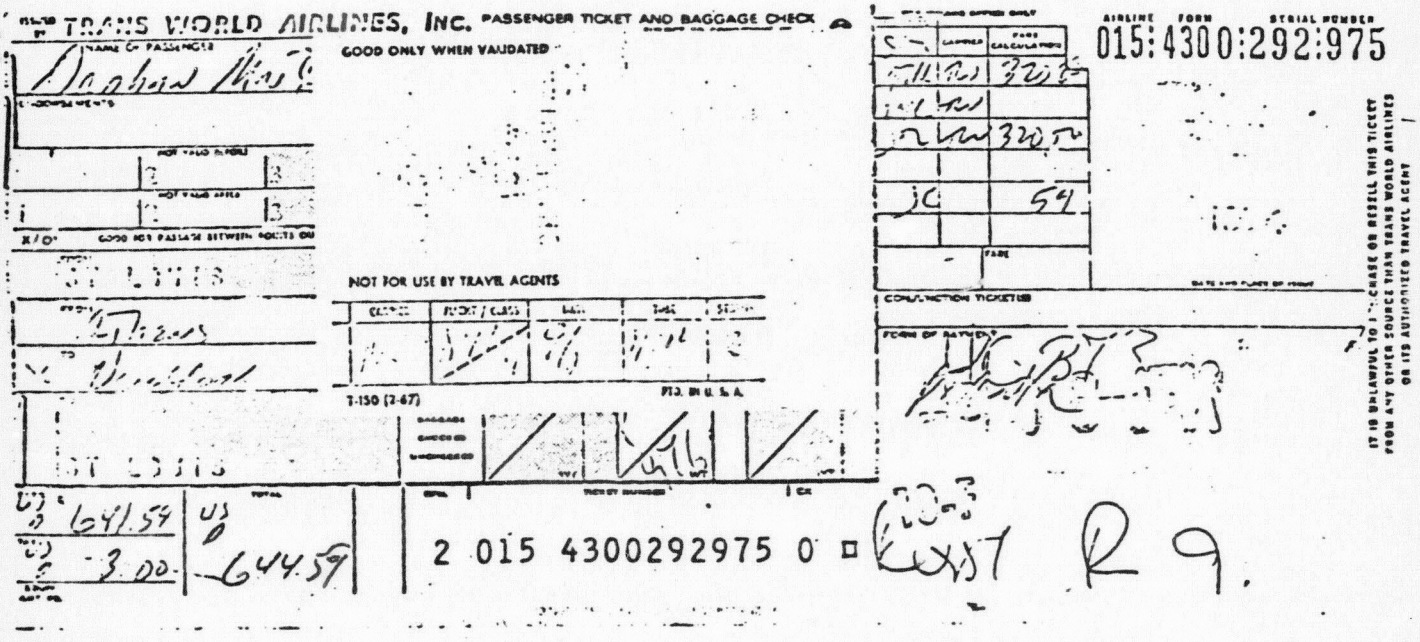




BEST COPY AVAILABLE

A 108

EXHIBIT B--PASSENGER TICKET COUPON (MRS. T. ORPHAN) ANNEXED TO AFFIDAVIT OF RICHARD E. NEUMAN


TRANS WORLD AIRLINES, INC. PASSENGER TICKET AND BAGGAGE CHECK

GOOD ONLY WHEN VALIDATED

NOT FOR USE BY TRAVEL AGENTS

T-150 (2-67)

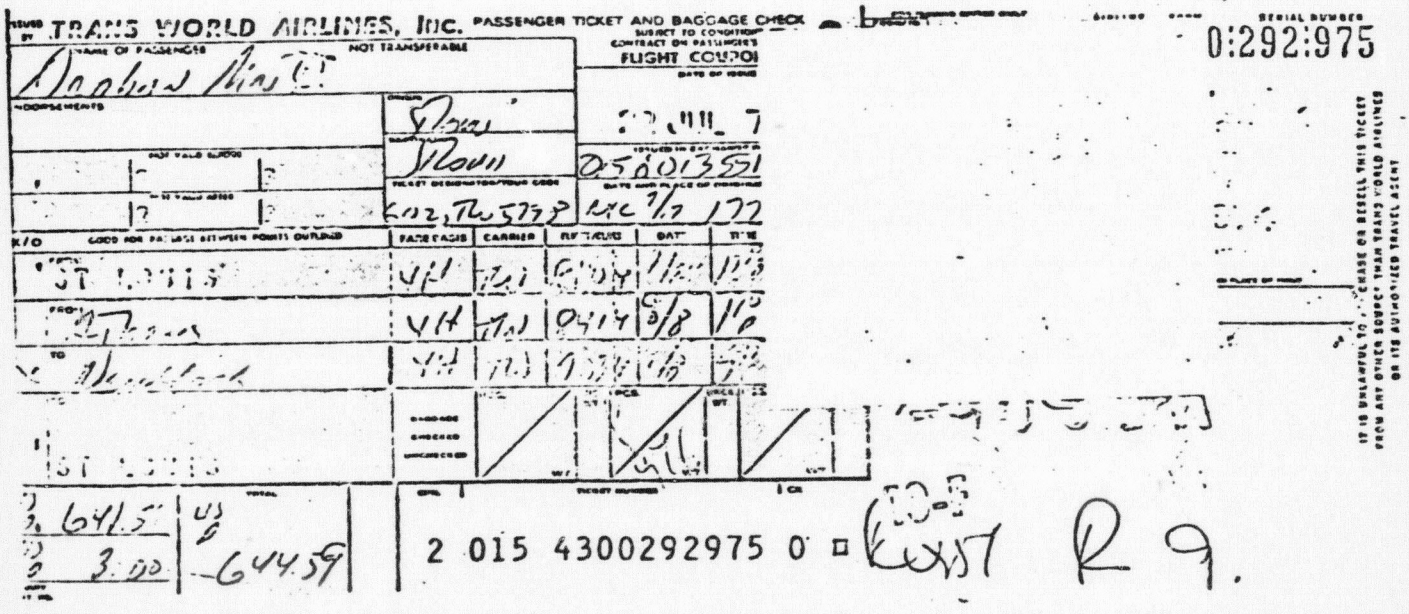
PRD. IN U. S. A.

AIRLINE 015 FORM 4300 SERIAL NUMBER 292975

IT IS UNLAWFUL TO PURCHASE OR RESELL THIS TICKET FROM ANY OTHER SOURCE THAN TRANS WORLD AIRLINES OR ITS AUTHORIZED TRAVEL AGENT

2 015 4300292975 0

EXST R 9.


TRANS WORLD AIRLINES, INC. PASSENGER TICKET AND BAGGAGE CHECK

NOT TRANSFERABLE

SUBJECT TO CONDITIONS OF CONTRACT ON PASSENGER'S FLIGHT COUPON

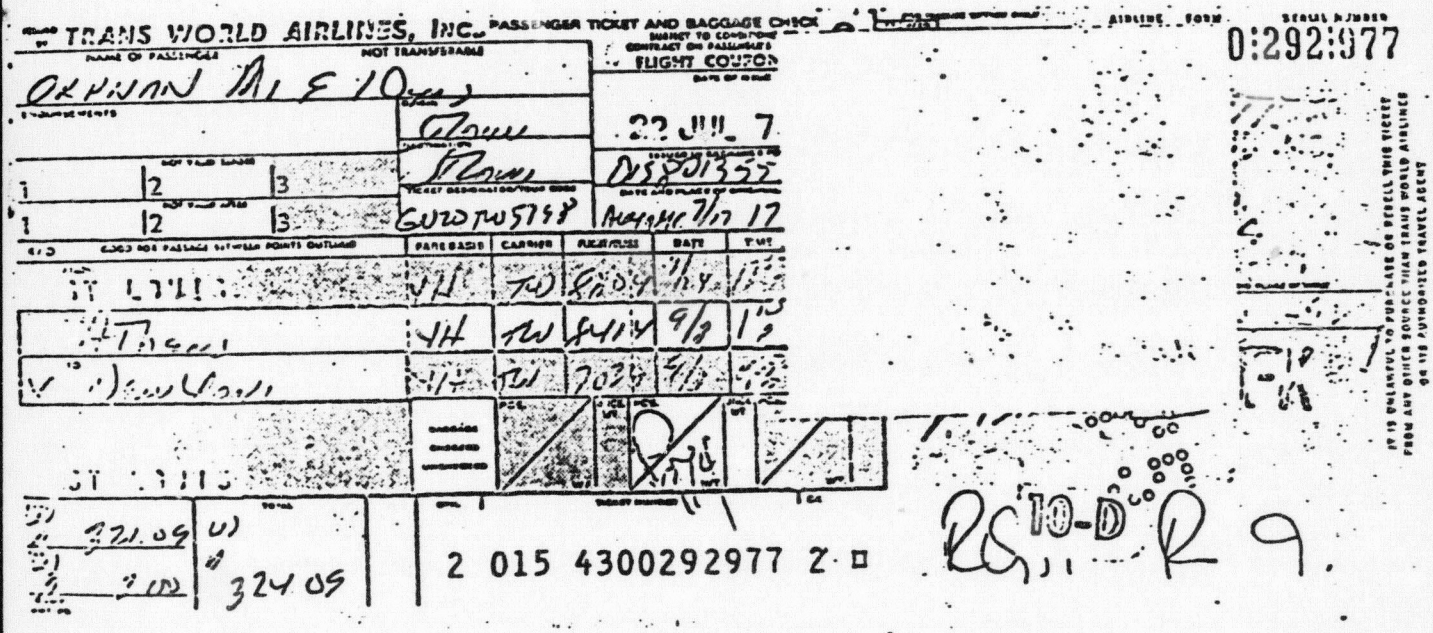
SERIAL NUMBER 0:292:975

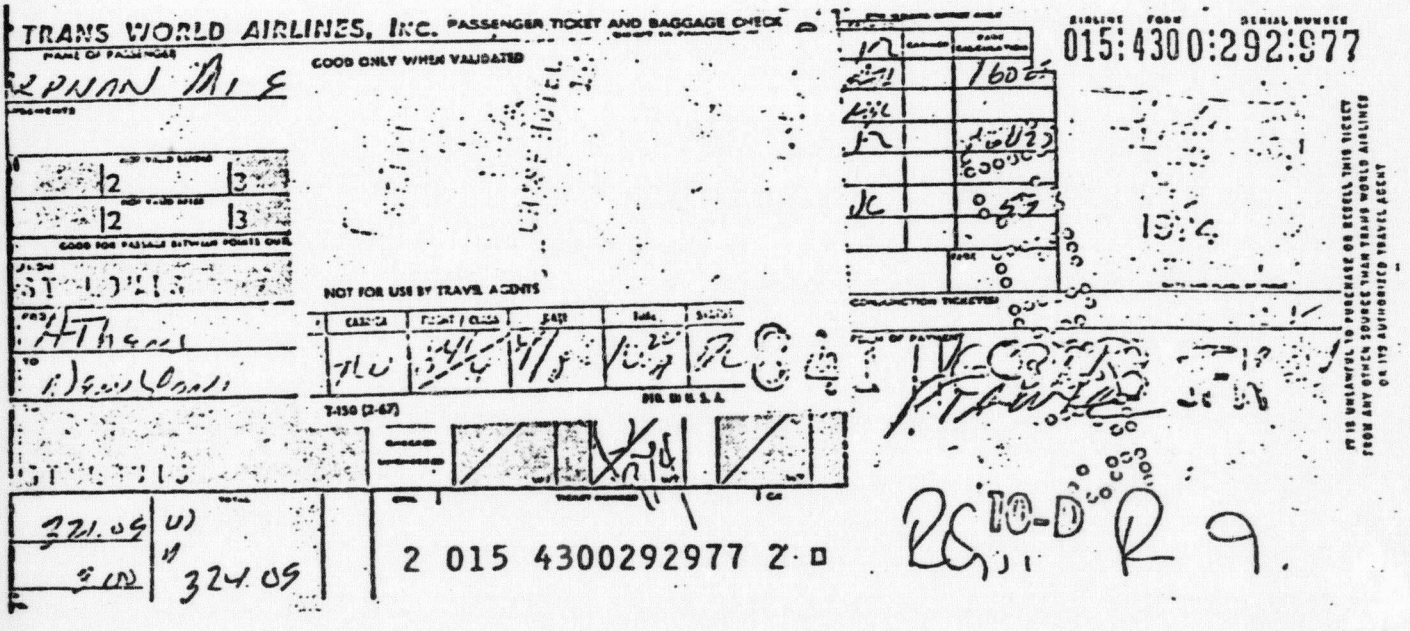
IT IS UNLAWFUL TO PURCHASE OR RESELL THIS TICKET FROM ANY OTHER SOURCE THAN TRANS WORLD AIRLINES OR ITS AUTHORIZED TRAVEL AGENT

2 015 4300292975 0

EXST R 9.

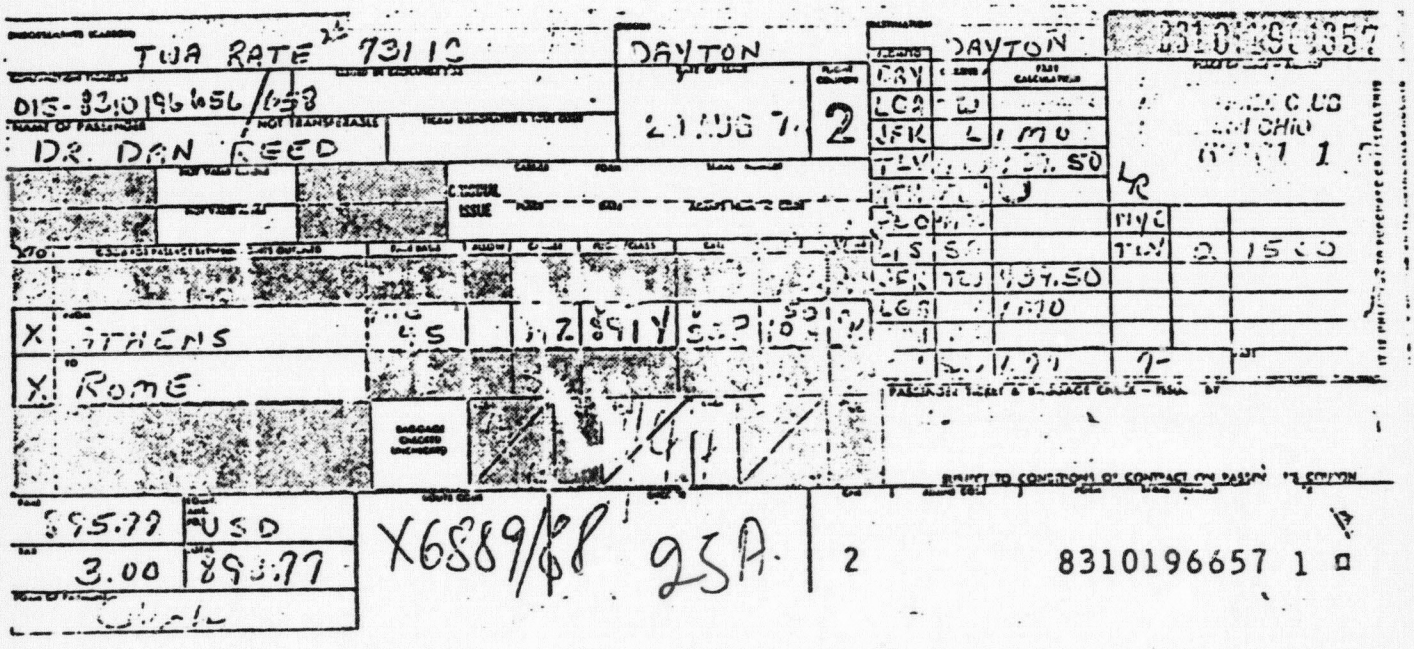
EXHIBIT C--PASSENGER TICKET COUPON (M. E. ORPHAN)
ANNEXED TO AFFIDAVIT OF RICHARD E. NEUMAN





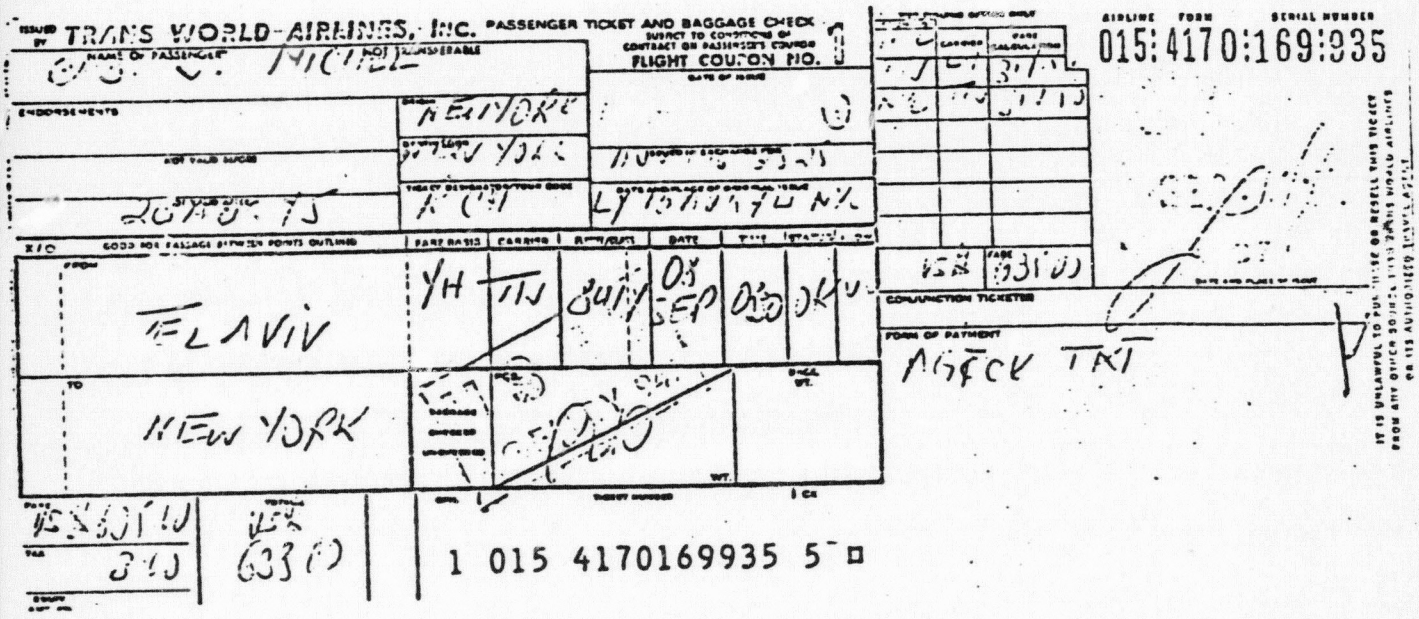
A 110

EXHIBIT D--PASSENGER TICKET COUPON (DR. DAN REED)
ANNEXED TO AFFIDAVIT OF RICHARD E. NEUMAN



A 111

EXHIBIT E--PASSENGER TICKET COUPON (J. MICHEL) ANNEXED TO AFFIDAVIT OF RICHARD E. NEUMAN



A 112

EXHIBIT F--PASSENGER TICKET COUPON (MRS. K. MICHEL)
ANNEXED TO AFFIDAVIT OF RICHARD E. NEUMAN

ISSUED BY TRANS WORLD AIRLINES, INC. PASSENGER TICKET AND BAGGAGE CHECK
SUBJECT TO CONDITIONS OF CONTRACT ON PASSENGER'S COUPON

NAME OF PASSENGER — NOT TRANSFERABLE: MRS. K. MICHEL

FLIGHT COUPON NO. 1

ENDORSEMENTS

ORIGIN: NEW YORK

DESTINATION: NEW YORK

NOT VALID BEFORE

NOT VALID AFTER: 24 HOURS

TICKET DESIGNATOR/FARE CODE: K

DATE AND PLACE OF ORIGINAL ISSUE: 07 JUN 72 NYC

X/O	GOOD FOR - STAGE BETWEEN POINTS OUTLINED	FARE BASIS	CARRIER	FLIGHT/SEAT	DATE	TIME	STATUS	BAG WT
FROM	TEL AVIV	YH	TW	841	05 SEP	0530	OK	00
TO	NEW YORK							

TOTAL 12/0.00	TOTAL USA
TAX .00	12/0.00

1 015 4170169934 4 □

L	CARRIER	FARE CALCULATION
NYC	TW	631 00
USA		12/0.00

CONJUNCTION TICKETED

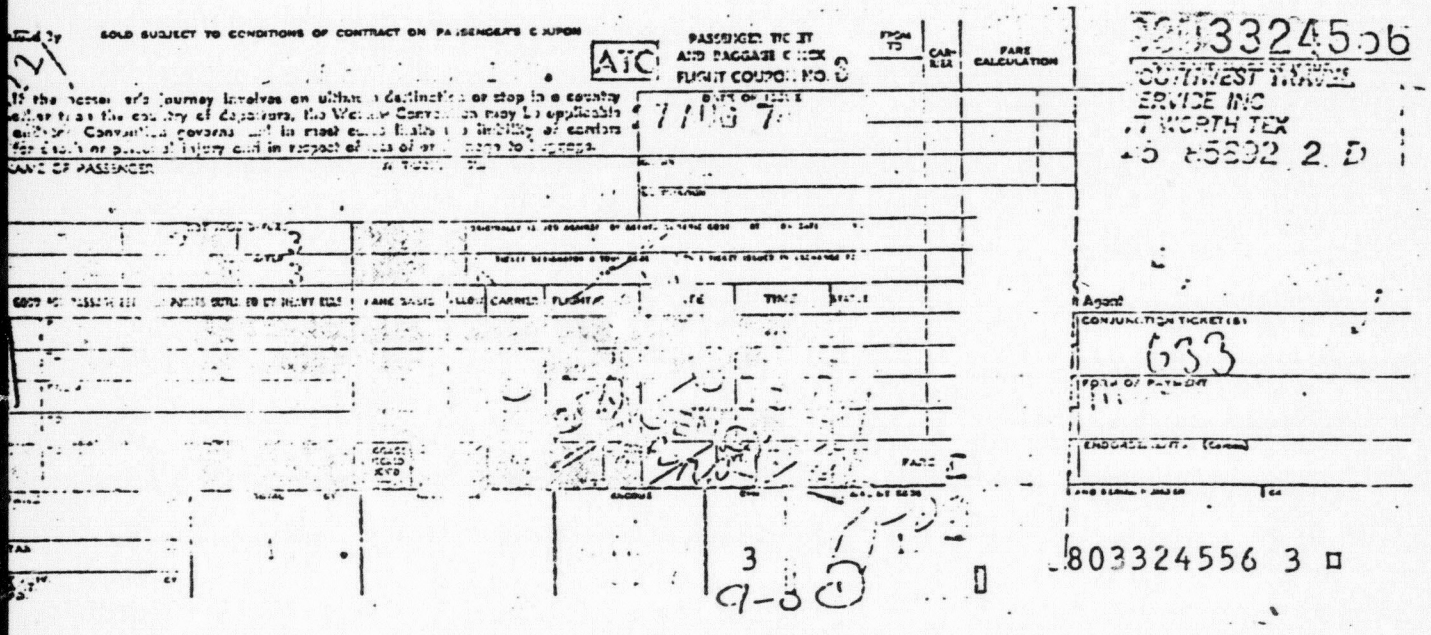
FORM OF PAYMENT: AGT CK TKT

AIRLINE FORM SERIAL NUMBER
015: 4170: 169: 934

IT IS UNLAWFUL TO PURCHASE OR ACCEPT THIS TICKET FROM ANY OTHER SOURCE THAN TRANS WORLD AIRLINES OR ITS AUTHORIZED TRAVEL AGENT

A 113

EXHIBIT G--PASSENGER TICKET COUPON (MR. JOHN GILDAY) ANNEXED TO AFFIDAVIT OF RICHARD E. NEUMAN



SOLD SUBJECT TO CONDITIONS OF CONTRACT ON PASSENGER'S COUPON

ATC

PASSENGER TICKET AND BAGGAGE CHECK FLIGHT COUPON NO. 3

FROM TO

CAR-RIER

FARE CALCULATION

DATE OF ISSUE

7 NOV 7

If the ticket's journey involves an ultimate destination or stop in a country other than the country of departure, the Warsaw Convention may be applicable and the Convention governs and in most cases limits the liability of carriers for death or personal injury and in respect of loss of or damage to baggage.

NAME OF PASSENGER

803324556

SOUTHWEST TRAVEL SERVICE INC FT WORTH TEX 45 45892 2 D

Agent

CONJUNCTION TICKET(S)

633

FORM OF PAYMENT

ENDORSEMENTS (Cont'd)

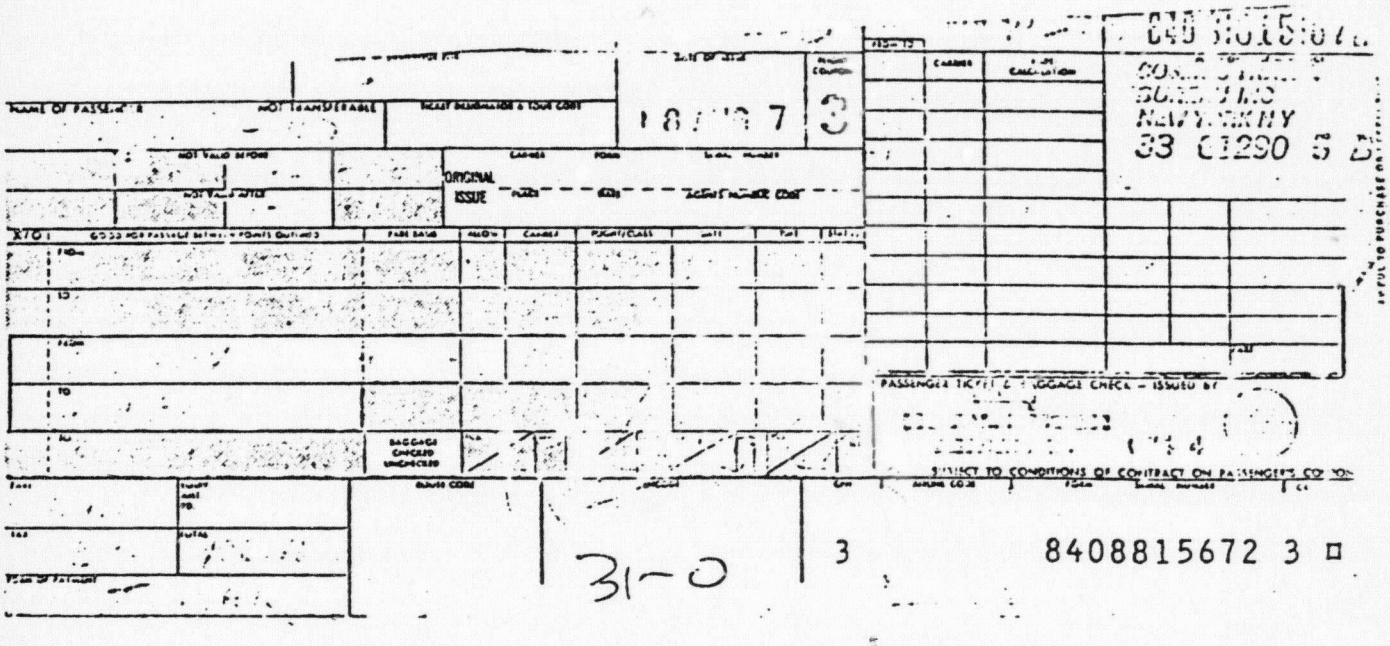
FARE

803324556 3

3

9-30

EXHIBIT H--PASSENGER TICKET COUPON (MR. E. BARD) ANNEXED TO AFFIDAVIT OF RICHARD E. NEUMAN



A 115

EXHIBIT I--PASSENGER TICKET COUPON (MR. S. BARD) ANNEXED TO AFFIDAVIT OF RICHARD E. NEUMAN

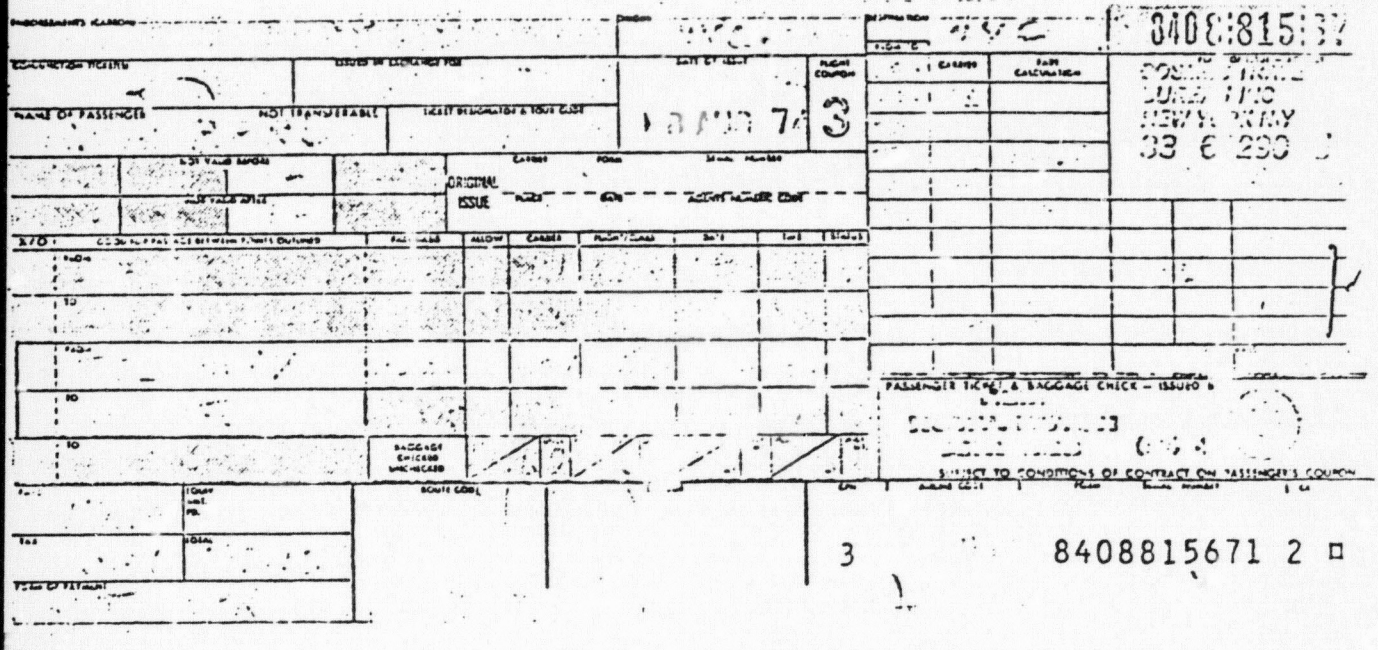


EXHIBIT J--CONDITIONS OF CONTRACT ANNEXED TO AFFIDAVIT OF RICHARD E. NEUMAN

NOTICE

If the passenger's journey involves an ultimate destination or stop in a country other than the country of departure the Warsaw Convention may be applicable and the Convention governs and in most cases limits the liability of carriers for death or personal injury and in respect of loss or damage to baggage. See also notice headed "Advice to International Passengers on Limitation of Liability."

CONDITIONS OF CONTRACT

1. As used in this contract, "ticket" means this passenger ticket and baggage check, of which these conditions and the notices form part, "carriage" is equivalent to "transportation", "carrier" means all air carriers that carry or undertake to carry the passenger or his baggage hereunder or perform any other service incidental to such air carriage, "WARSAW CONVENTION" means the Convention for the Unification of Certain Rules Relating to International Carriage by Air signed at Warsaw, 12th October 1929, or that Convention as amended at The Hague, 28th September 1955, whichever may be applicable.

2. Carriage hereunder is subject to the rules and limitations relating to liability established by the Warsaw Convention unless such carriage is not "international carriage" as defined by that Convention.

3. To the extent not in conflict with the foregoing carriage and other services performed by each carrier are subject to: (i) provisions contained in this ticket, (ii) applicable tariffs, (iii) carrier's conditions of carriage and related regulations which are made part hereof (and are available on application at the offices of carrier), except in transportation between a place in the United States or Canada and any place outside thereof to which tariffs in force in those countries apply.

4. Carrier's name may be abbreviated in the ticket, the full name and its abbreviation being set forth in carrier's tariffs, conditions of carriage, regulations or timetables; carrier's address shall be the airport of departure shown opposite the first abbreviation of carrier's name in the ticket; the agreed stopping places are those places set forth in this ticket or as shown in carrier's timetables as scheduled stopping places on the passenger's route; carriage to be performed hereunder by several successive carriers is regarded as a single operation.

5. An air carrier issuing a ticket for carriage over the lines of another air carrier does so only as its agent.

6. Any exclusion or limitation of liability of carrier shall apply to and be for the benefit of agents, servants and representatives of carrier and any person whose aircraft is used by carrier for carriage and the agents, servants and representatives.

7. Checked baggage will be delivered to bearer of the baggage check. In case of damage to baggage moving in international transportation complaint must be made in writing to carrier forthwith after discovery of damage and, at the latest, within 7 days from receipt; in case of delay, complaint must be made within 21 days from date the baggage was delivered. See tariffs or conditions of carriage regarding non-international transportation.

8. This ticket is good for carriage for one year from date of issue, except as otherwise provided in this ticket, in carrier's tariffs, conditions of carriage, or related regulations. The fare for carriage hereunder is subject to change prior to commencement of carriage. Carrier may refuse transportation if the applicable fare has not been paid.

9. Carrier undertakes to use its best efforts to carry the passenger and baggage with reasonable dispatch. Times shown in timetable or elsewhere are not guaranteed and form no part of this contract. Carrier may without notice substitute alternate carriers or aircraft, and may alter or omit stopping places shown on the ticket in case of necessity. Schedules are subject to change without notice. Carrier assumes no responsibility for making connections.

10. Passenger shall comply with Government travel requirements, present exit, entry and other required documents and arrive at airport by time fixed by carrier or, if no time is fixed, early enough to complete departure procedures.

11. No agent, servant or representative of carrier has authority to alter, modify or waive any provision of this contract.

CARRIER RESERVES THE RIGHT TO REFUSE CARRIAGE TO ANY PERSON WHO HAS ACQUIRED A TICKET IN VIOLATION OF APPLICABLE LAW OR CARRIER'S TARIFFS, RULES OR REGULATIONS

Issued by the Carrier whose name is in the "Issued By" section on the face of the Passenger Ticket and Baggage Check. SUBJECT TO TARIFF REGULATIONS

AFFIDAVIT OF RICHARD H. AIME IN OPPOSITION TO MOTION

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

RUTH ANN REED, as Administratrix of the Estate of DAN WILLIAM REED, deceased, and as parent, natural guardian, and best friend of CYNTHIA ANN REED, DEBORA LYNN REED and JULIE MARIE REED, all infants, and Eight Other Wrongful Death Claims, Plaintiffs, -against- FORWOOD CLOUD WISER, JR., and RICHARD E. NEUMAN, Defendants.	:	AFFIDAVIT 75 Civ. 4015 (MEF)

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

RICHARD H. AIME being duly sworn deposes and says:

That he is Director - Tariff Development for Trans World Airlines, Inc., and as such is fully familiar with the TWA tariffs in force and effect on September 8, 1974.

On September 8, 1974 TWA, Local and Joint Interna-

tional Passenger Rules Tariff No. R-3 was in force and effect and was applicable to the transportation by air of the decedents alleged in this action.

Those portions of the TWA R-3 tariff relating to Liability of Carriers are attached hereto as Exhibit "A".

Richard H. Aime
RICHARD H. AIME

Sworn to before me this
8th day of December, 1975

Notary Public

New York
County
New York County
March 30, 19__

EXHIBIT A--T.W.A. LOCAL AND JOINT INTERNATIONAL PASSENGER RULES TARIFF NO. R-3 ANNEXED TO AFFIDAVIT OF RICHARD H. AIME

10th Revised Title Page
Cancels 9th Revised Title Page

TRANS WORLD AIRLINES, INC.

LOCAL AND JOINT INTERNATIONAL PASSENGER RULES TARIFF No. R-3

Containing

Rules and Regulations

Governing the Carriage of

PASSENGERS AND BAGGAGE

Applicable
Between Points in the

UNITED STATES and CANADA

and

AFRICA, ASIA, AUSTRALASIA and EUROPE

This tariff is applicable only in connection with tariffs making reference hereto.

Rules and regulations provided herein have been filed with, or submitted to, each country as required by applicable international agreements.

For explanation of Abbreviations and Reference Marks, see Page 6.

ISSUED:	Issued by:	EFFECTIVE:
January 22, 1973	W. T. LAGOW, JR. Staff Vice President - Pricing 605 Third Avenue New York, New York 10016	February 21, 1973 (Original Tariff effective October 1, 1954)

(Printed in U.S.A.)

Correction No. 599

Departure from Rules 8.5.3, 8.10.1, 11.6 and 11.7 of Rules 1/52 authorized under Special Permission No. 2227 dated August 4, 1954 of the Air Transport Board.

Exhibit A Annexed to Affidavit of Richard H. Aime

The rules, regulations and charges provided herein have been filed with or submitted to each country as required by applicable international agreements.

C.T.C.(A) No. 16 C.A.B. No. 17

Trans World Airlines, Inc.
Local & Joint International Passenger Rules Tariff No. R-3

2nd Revised Page 4-A
Cancels 1st Revised Page 4-A

NOTICE

The rules herein applying to the transportation of passengers and baggage were formerly published in C.A.B. No. 13, A.T.B. No. 13 issued by Agent W.D. Barrington and are cancelled therein by Supplement No. 2. thereto.

PARTICIPATING CARRIERS

This Tariff is published and filed by Trans World Airlines, Inc. for and on behalf of itself and the following participating air carriers, under authority of powers of Attorney and Concurrences filed with the Civil Aeronautics Board and the aCanadian Transport Commission (Air Transport Committee).

Participating Carriers	Abbreviations	Concurrence C.A.B. No.	Concurrence aC.T.C.(A) G.C.No.	Power of Attorney aC.T.C.(A) Pa.No.
Aden Airways Limited	AD	3		
Ader Lingus Teoranta	ALT	12		
Aeroflot	AFL	10		
Aerolineas Argentinas	ARG	1		
Aerolinee Itavia-S.p.A.	ITAVIA	3		
Aero O Y	FINNAIR	6		
Aerovias Nacionales de Colombia, S.A.	AVN	2		
‡ Air Canada	AC	8	22	22
Air Ceylon Limited	AIRCEY	5		
aΣ Air-India	AI AII	2		
Air Liban	LN	1		
aΣ Air New Zealand Limited	TEAL	7		
aΣ Air West, (Hughes Air Corp. d b a Air West)	RW	3		
ALITALIA-Linee Aeree Italiane, S.p.A.	AZ	30		
aΣ Allegheny Airlines, Inc	AL	1		
American Airlines, Inc.	AA	47		4 No. 10
Ariana Afghan Airlines Co., Ltd	ARIANA	2		
"ARKIA" Israel Inland Airlines Ltd.	ARKIA	1		
Australian National Airways Pty. Ltd.	ANA	1		
Austrian Airlines, Osterreichische Luftverkehrs-Aktiengesellschaft	AUA	1		
Aviacion Y Comercio, S.A.	AVIACO	1		
BKS Air Transport Limited	BKS	4		
Braniff Airways, Incorporated	BN	25		
British European Airways Corporation	BEA	19		
British Overseas Airways Corporation	BOAC	15	2	1 No. 2
Canadian Pacific Air Lines, Limited	CPA	9		4 No. 5
Cathay Pacific Airways, Ltd	CATHAY	3		
Central African Airways Corporation	CAA	5		
Ceskoslovenske Aerolinie	CSA	9		
Chicago Helicopter Airways, Inc	CH	2		
Civil Air Transport	CAT	2		
Compagnie Generale de Transports Aeriens. Air Algerie	ALG	2		
Compagnie Nationale Air France	AF	4		
Compagnie Nationale De Transports Aeriens Royal Air Maroc	ATM RAM	1		
Continental Airlines, Inc	CO	15		

(Continued on next page)

‡, Σ, Σ - See Substitution Notice on Page 6.
For Explanation of Abbreviations and Reference Marks, see Page 6.

ISSUED: October 15, 1973

EFFECTIVE: November 14, 1973

(Printed in U.S.A.)

CORRECTION NO. 626

A 121

Exhibit A Annexed to Affidavit of Richard H. Aime

...ariff rules, regulations and ... have been filed with or submitted to each country as required by applicable international agreements.

C.T.C. (A) No. 16 C.A.B. No. 17

Trans World Airlines, Inc.
Local & Joint International Passenger Rules Tariff No. R-3

2nd Revised Page 4-B
Cancels 1st Revised Page 4-B

LIST OF PARTICIPATING CARRIERS (Continued)

Participating Carriers (Continued)	Abbreviations	Concurrence		Power of Attorney
		C.A.B. No.	▲C.T.C. (A) G.C.No.	▲C.T.C. (A) Pa.No.
Cyprus Airways Limited	CAL CYP	2		
▲Delta Air Lines, Inc.	DL	16		
Deutsche Lufthansa Aktiengesellschaft (Also operating as "Lufthansa German Airlines")	LH	4		
East African Airways Corporation	EC	3		
Eastern Air Lines, Inc.	EA	30	17	1 No. 15
El Al Israel Airlines Limited	ELAL	3		
Ethiopian Air Lines, Inc.	ETHIOPIAN	6		
▲Frontier Airlines, Inc.	FL	3		
Gibraltar Airways,Ltd	GIBAIR	1		
Guest Aerovias Mexico, S.A. de C.V.	GAM	3		
Iberia Lineas Aereas de Espana, S.A	IB	10		
Indian Airlines Corporation	IAC	1		
Iran National Airlines Corporation	IRA	2		
Iraqi Airways	IA	4		
Japan Air Lines Company, Ltd.	JAL	3		
Jugoslovenski Aerotransport	JAT	3		
K.L.M. Royal Dutch Airlines	KLM	17		
▲Korean Airlines, Co Ltd	KNA	1		
Los Angeles Airways, Inc.	LX	1		
LUXAIR-Societe Anonyme Luxembourgeoise de Navigation Aerienne	LUXAIR	1		
▲Malaysia-Singapore Airlines Ltd	MSA	3		
Middle East Airlines Airliban,S.A.L	MEA	1		
Mohawk Airlines, Inc.	[illegible]	[illegible]	[illegible]	[illegible]
National Airlines, Inc.	NA	56		
New York Airways, Inc	NY	5		
▲North Central Airlines, Inc	NC	1		
Northeast Airlines, Inc	[illegible]	[illegible]	[illegible]	[illegible]
Northwest Airlines, Inc. (Also operating as Northwest Orient Airlines)	[illegible]	42	4	1 No. 4
Olympic Airways, S.A.	OA	1		
▲Ozark Airlines, Inc	OZ	1		
Pakistan International Airlines Corporation	PIA	1		
Panair do Brasil, S.A	PAB	7		
Pan American World Airways, Inc	PAA	15		
Philippine Air Lines, Inc	PAL	19		
P.N. Garuda Indonesian Airways	GIA	14		
▲Piedmont Aviation, Inc.	PI	7		
Qantas Airways Limited	QEA	7		
Royal Air Cambodge	RAC	1		
San Francisco & Oakland Helicopter Airlines, Inc.	OH	3		
Saudi Arabian Airlines	SDI	1		
Scandinavian Airlines System	SAS	6		
Societe Anonyme Belge d'Exploitation de La Navigation Aerienne (SABENA) (Also operating as Sabena Belgian World Airlines)	SAB	13		

(Continued on next page)

▲ - See Substitution Notice, Page 6.
For Explanation of Abbreviations and Reference Marks, see page 6.

ISSUED: October 15, 1973

EFFECTIVE: November 14, 1973

(Printed in U.S.A.)

CORRECTION NO. 627

A 122

Exhibit A Annexed to Affidavit of Richard H. Aime

The rules, regulations and charges provided herein have been filed with or submitted to each country as required by applicable International Agreements.

C.T.C.(A) No. 16 C.A.B. No. 17

Trans World Airlines, Inc.
Local & Joint International Passenger Rules Tariff No. R-3

26th Revised Page 5
Cancels 25th Revised Page 5

LIST OF PARTICIPATING CARRIERS (Concluded)

Participating Carriers (Concluded)	Abbreviations	Concurrence		Power of Attorney
		C.A.B. No.	▲C.T.C.(A) G.C.No.	▲C.T.C.(A) Pa.No.
Societe Tunisienne de L'Air Tunis Air	TU	2		
▲South African Airways	SA	▲2		
■Southern Airways, Inc	SO	1		
South Pacific Air Lines, Inc.	SPAL	1		
Sudan Airways	SUDAN	2		
SWISSAIR, Swiss Air Transport Company, Limited.	SR	38		
The Gulf Aviation Company Limited	GULF	2		
Trans-Australia Airlines.	TAA	1		
Transportes Aereos Portugueses S.A.R.L.	TAP	4		
▲Texas International Airlines, Inc.	TT	▲6		
▲▲United Air Lines, Inc.	UA	42		4 No. 9
United Arab Airlines, U.A.A.	MS	1		
W.A.A.C. (Nigeria) Ltd.	WAAC	1		
Western Air Lines, Inc.	WA	46	4	1 No. 3

▲▲-See Substitution Notice on Page 6.
For Explanation of Abbreviations and Reference Marks, see Page 6.

ISSUED: October 15, 1973

EFFECTIVE: November 14, 1973

(Printed in U.S.A.)

CORRECTION NO. 628

A 123

Exhibit A Annexed to Affidavit of Richard H. Aime

The rules, regulations and charges provided herein have been filed with or submitted to each country as required by applicable international agreements.

C.T.C.(A) No. 16 C. A. B. No. 17

Trans World Airlines, Inc.
Local & Joint International Passenger Rules Tariff No. R-3

25th Revised Page 6
Cancels 24th Revised Page 6

EXPLANATION OF SYMBOLS AND REFERENCE MARKS

- ⊞ Denotes addition.
- ⊟ Denotes reduction.
- ⊕ Denotes increase.
- A Denotes change in wording which results in neither increase nor decrease.
- Σ Denotes cancellation.
- $ Denotes dollars (See Rule 2-A).
- / Denotes "or".
- % Denotes Percentage.

EXPLANATION OF ABBREVIATIONS

- Apr. . . . April
- ATB. . . . Canadian Transport Commission (Air Transport Committee)
- Aug. . . . August
- C.A.B. . . Civil Aeronautics Board
- Can. . . . Canadian
- C.T.C.(A). Canadian Transport Commission (Air Transport Committee)
- Cy . . . . Currency
- d/b/a. . . doing business as
- Dec. . . . December
- Feb. . . . February
- IATA . . .International Air Transport Association
- Inc. . . .Incorporated
- Jan. . . .January
- Jun. . . .June
- Kilo(s). .Kilogram(s)
- Lb(s). . .Pound(s)
- Ltd. . . .Limited
- Mar. . . .March
- Mos. . . .Months
- Nov. . . .November
- Oct. . . .October
- Sept . . .September
- TW/TWA . .Trans World Airlines, Inc.
- U.S.(A). .United States (of America)
- USSR . . .Union of Soviet Socialist Republics
- Yrs. . . .Years

ADSUBSTITUTION NOTICE

The carrier named in Column 1, having taken over the tariffs,etc.,of the carrier(s) named in Column 2 by Adoption Notice as shown in columns 3 and 4 is hereby substituted for the name of the carrier(s) in Column 2, wherever the latter appears in this tariff (as amended).

Column 1 Adopting Carrier	Column 2 Adopted Carrier	Column 3 As Per Adoption Notice C.A.B.	Column 4 As Per Adoption Notice C.T.C.(A)
Air Canada	Trans-Canada Airlines	1	1
Air-India	Air-India International	1	1
Air New Zealand Limited	Tasman Empire Airways,Limited	1	1
Air West Inc.	West Coast Airlines, Inc.	1	1
Allegheny Airlines, Inc.	Mohawk Airlines, Inc.	27	7
Delta Airlines, Inc.	Northeast Airlines, Inc.	171	2
Frontier Airlines, Inc.	Central Airlines, Inc.	46	
United Airlines, Inc.	Capital Airlines, Inc.	100	34

ISSUED: October 15, 1973

EFFECTIVE: November 14, 1973

(Printed in U.S.A.)

CORRECTION NO. 629

Exhibit A Annexed to Affidavit of Richard H. Aime

The rules, regulations and charges provided herein have been filed with or submitted to each country as required by applicable international agreements.

C.T.C.(A) No. 16 C.A.B. No. 17

Trans World Airlines, Inc.
Local & Joint International Passenger Rules Tariff No. R-3

25th Revised Page 6
Cancels 24th Revised Page 6

EXPLANATION OF SYMBOLS AND REFERENCE MARKS

≡ Denotes addition.	▲ Denotes change in wording which results in neither increase nor decrease.	$ Denotes dollars (See Rule 2-A).
↓ Denotes reduction.	Σ Denotes cancellation.	/ Denotes "or".
↑ Denotes increase.		% Denotes Percentage.

EXPLANATION OF ABBREVIATIONS

Apr. . . . April	IATA . . .International Air Transport Association	Nov. . . .November
ATB. . . . Canadian Transport Commission (Air Transport Committee)	Inc. . . .Incorporated	Oct. . . .October
Aug. . . . August	Jan. . . .January	Sept . . .September
C.A.B. . . Civil Aeronautics Board	Jun. . . .June	TW/TWA . .Trans World Airlines, Inc.
Can. . . . Canadian	Kilo(s). .Kilogram(s)	U.S.(A). .United States (of America)
C.T.C.(A). Canadian Transport Commission (Air Transport Committee)	Lb(s). . .Pound(s)	USSR . . .Union of Soviet Socialist Republics.
Cy . . . . Currency	Ltd. . . .Limited	Yrs. . . .Years
d/b/a. . . doing business as	Mar. . . .March	
Dec. . . . December	Mos. . . .Months	
Feb. . . . February		

A: SUBSTITUTION NOTICE

The carrier named in Column 1, having taken over the tariffs,etc.,of the carrier(s) named in Column 2 by Adoption Notice as shown in columns 3 and 4 is hereby substituted for the name of the carrier(s) in Column 2, whenever the latter appears in this tariff (as amended).

Column 1 Adopting Carrier	Column 2 Adopted Carrier	Column 3 As Per Adoption Notice C.A.B.	Column 4 As Per Adoption Notice C.T.C.(A)
Air Canada	Trans-Canada Airlines	1	1
Air-India	Air-India International	1	1
Air New Zealand Limited	Tasman Empire Airways,Limited	1	1
Air West Inc.	West Coast Airlines, Inc.	1	1
Allegheny Airlines, Inc.	Mohawk Airlines, Inc.	27	7
Delta Airlines, Inc.	Northeast Airlines, Inc.	171	2
Frontier Airlines, Inc.	Central Airlines, Inc.	46	
United Airlines, Inc.	Capital Airlines, Inc.	100	34

ISSUED: October 15, 1973

EFFECTIVE: November 14, 1973

(Printed in U.S.A.)

CORRECTION NO. 629

The rates, regulations and charges provided herein have been filed with or submitted to each country as required by applicable international agreements.

A T B No 15 C A B No. 17

Trans World Airlines, Inc.
Local & Joint International Passenger Rules Tariff No. R-3

7th Revised Page 30
Cancels 6th Revised Page 30

RULE 13. PASSENGER EXPENSES EN ROUTE (Continued)

(B) Hotel Reservations

When requested by passengers, Carrier will make application on their behalf for hotel reservations, but the availability thereof is not guaranteed. All expenses incurred by Carrier in arranging, or attempting to arrange for reservations will be chargeable to passengers.

(C) Arrangements Made by Carrier

In making arrangements for hotel or other housing and board accomodations for passengers or for excursion trips on the ground or other similar arrangements whether or not the cost of such arrangements is for the account of Carrier, Carrier acts only as agent for the passenger and Carrier is not liable for loss, damage or expense of any nature whatsoever incurred by the passenger as a result of or in connection with the use by the passenger of such accommodation or the denial of the use thereof to the passenger by any other person, company or agency.

RULE 14. TAXES

Any tax or other charge imposed by government authority and collectable from a passenger will be in addition to the published fares and charges, except that transit taxes at connecting points may be absorbed under the conditions indicated in Rule 13, paragraph (A), sub-paragraphs (a) and (b), provided also that such transit tax is not applicable to such through service.

RULE 15. ADMINISTRATIVE FORMALITIES

(A) Compliance with Regulations

The passenger shall comply with all laws, regulations, orders, demands or travel requirements of countries to be flown from,into or over, and with all rules, regulations and instructions of Carrier. Carrier shall not be liable for any aid or information given by any agent or employee of Carrier to any passenger in connection with obtaining necessary documents or complying with such laws, regulations, orders, demands, requirements or instructions, whether given orally or in writing, or otherwise; or for the consequences to any passenger resulting from his failure to obtain such documents or to comply with such laws, regulations, orders, demands, requirements or instructions.

(B) Passports and Visas

(1) The passenger shall comply with all government travel requirements and present all exit, entry and other documents required by the laws, and, unless applicable laws provide otherwise, shall indemnify the Carrier for any loss, damage or expense suffered or incurred by such carrier by reason of such passenger's failure to do so. Carrier is not liable to the passenger for loss or expense due to the passenger's failure to comply with this provision. Carrier reserves the right to refuse carriage to any passenger who has not complied with applicable laws,regulations,orders,demands or requirements or whose documents are not complete.

(2) Subject to applicable laws and regulations,the passenger agrees to pay the applicable fare whenever Carrier,on government order,is required to return a passenger to his point of origin or elsewhere due to the passenger's inadmissibility into or deportation from a country,whether of transit or of destination. Carrier may apply to the payment of such fares any funds paid by the passenger to Carrier for unused carriage,or any funds of the passenger in the possession of Carrier. The fare collected for carriage to the point of refusal or deportation will not be refunded by Carrier.

(C) Customs Inspection

If required, the passenger must attend inspection of his baggage, checked or unchecked, by customs or other government officials. Carrier accepts no responsibility toward the passenger, if the latter fails to observe this condition. If damage is caused to Carrier because of the passenger's failure to observe this condition, the passenger shall indemnify Carrier therefor.

(D) Government Regulation

No liability shall attach to Carrier if Carrier in good faith determines that what it understands to be applicable law, government regulation, demand, order or requirement, requires that it refuse and it does refuse to carry a passenger.

RULE 16. LIABILITY OF CARRIERS

(A) Successive Carriers

Carriage to be performed under one ticket or under a ticket and any conjunction ticket issued in connection therewith by several successive Carriers is regarded as a single operation.

Reissued without change.

(Continued on next page)

For explanation of abbreviations and reference marks used but not explained on this page, see page 6.

ISSUED: July 22, 1963

Issued by:
JOHN R. BARCH
Vice-President—Industry Association Affairs
380 Madison Avenue, New York 17, N.Y.

EFFECTIVE: August 21, 1963

(Printed in U. S. A.)

CORRECTION NO. 350

Trans World Airlines, Inc.
Local & Joint International Passenger Rules Tariff No. R-3

14th Revised Page 31
Cancels 13th Revised Page 31

RULE 16: LIABILITY OF CARRIERS (Continued)

(B) Laws and Provisions Applicable.

(1)(a) Applicable only to *AA, AC, AF, AI, AL, ALT, ANA, ARG, AUA, AVN, AZ, BEA, BN, BOAC, CATHAY, CPA, CO, CSA, CYPRUS, DL, ELAL, ETHIOPIAN, FINNAIR, FL, IB, JAL, JAT, KLM, LH, MAL, MEA, MS, NA, NE, NW, NYA, OA, PAA, PAL, PIA, QEA, RAC, RW, SA, SAB, SAS, SR, TAP, TEAL, TT, Tw, and UA.

The Carrier shall avail itself of the limitation of liability provided in the Convention for the Unification of Certain Rules Relating to International Carriage by Air signed at Warsaw October 12th, 1929, or provided in the said Convention as amended by the Protocol signed at The Hague September 28th, 1955. However, in accordance with Article 22 (1) of said Convention, or said Convention as amended by said Protocol, the Carrier agrees that, as to all international transportation by the Carrier as defined in the said Convention or said Convention as amended by said Protocol, which, according to the Contract of Carriage, includes a point in the United States of America as a point of origin, point of destination, or agreed stopping place.

(i) The limit of liability for each passenger for death, wounding, or other bodily injury shall be the sum of U.S. $75,000 (Canadian $75,750.00) inclusive of legal fees and costs, except that, in case of a claim brought in a State where provision is made for separate award of legal fees and costs, the limit shall be the sum of U.S. $58,000 (Canadian $58,580.00) exclusive of legal fees and costs.

(ii) The Carrier shall not, with respect to any claim arising out of the death, wounding, or other bodily injury of a passenger, avail itself of any defense under Article 20 (1) of said Convention or said Convention as amended by said Protocol. Nothing herein shall be deemed to affect the rights and liabilities of the Carrier with regard to any claim brought by, or on behalf of, or in respect of, any person who has wilfully caused damage which resulted in death, wounding, or other bodily injury of a passenger.

(b) Except as provided in subparagraph (1) (a) above, carriage hereunder is subject to the rules and limitations relating to liability established by the Convention for the Unification of Certain Rules Relating to International Carriage by Air, signed at Warsaw, October 12, 1929 or that Convention as amended by The Hague Protocol, 1955, whichever may be applicable (hereinafter called "the Convention"), unless such carriage is not international carriage as defined by the Convention. In the international carriage (as defined in the Convention) of passengers, the liability of the carrier for each passenger is limited to the sum of 125,000 French gold francs or its equivalent (U. S. equivalent approximately †◆$10.000.00) or 250,000 French gold francs or its equivalent (U. S. equivalent approximately †◆$20.000.00) if The Hague Protocol Amendment of the Convention is applicable. (See Note Page 32).

(c) Applicable to All Participating Carriers Except AA, AC, AF, AI, AL, ALT, ANA, ARG, AUA, AVN, AZ, BEA, BN, BOAC, CATHAY, CPA, CO, CSA, CYPRUS, DL, EA, ELAL, ETHIOPIAN, FINNAIR, FL, IB, JAL, JAT, KLM, LH, MAL, MEA, MS, NA, NE, NW, NYA, OA, PAA, PAL, PIA, QEA, RAC, RW, SA, SAB, SAS, SR, TAP, TEAL, TT, Tw, UA, and WA.

Carrier shall avail itself of the limitation of liability to passengers as provided in the Convention (see Rule 1 herein); and, in the international transportation of passengers, the liability of the carrier for personal injury or death of each passenger shall be limited to the sum of 125,000 French gold francs or its equivalent (the United States equivalent is approximately †◆$10.000.00) or 250,000 French gold francs or its equivalent (the United States equivalent is approximately †◆$20.000.00) if The Hague Protocol Amendment of the Convention is applicable. (See Note Page 32).

(d) Intentionally Left Blank.

(Continued on next page)

* Amounts shown in Canadian dollars are not applicable for AA or UA.

For explanation of abbreviations and reference marks used but not explained on this page, see page 6.

ISSUED: February 5, 1974

EFFECTIVE: March 7, 1974 (Except as Noted)

(Printed in U.S.A.)

†Effective February 6, 1974. Issued on 1 day's notice under Special Tariff Permission No. 33232 of the Civil Aeronautics Board.

CORRECTION NO. 644

A 127

Exhibit A Annexed to Affidavit of Richard H. Aime

RULE 16 LIABILITY OF CARRIERS (Continued)

(B) Laws and Provisions Applicable (Continued)

(1)(e) Applicable only to EA and WA

The carrier shall avail itself of the limitation of liability provided in the Convention for the Unification of Certain Rules relating to International Carriage by Air signed at Warsaw, October 12, 1929, or provided in the said Convention as amended by the protocol signed at The Hague, September 28, 1955. However, in accordance with Article 22 (1) of said Convention or said Convention as amended by said protocol, the carrier agrees that, as to all international transportation by the carrier as defined in the said Convention, or said Convention as amended by said protocol which according to the contract of carriage, includes a point in the United States of America as a point of origin, point of destination, or agreed stopping place: (1) the limit of liability for each passenger for death, wounding, or other bodily injury shall be the sum of U. S. Dollars 75,000 (Canadian Dollars 75,750.00) inclusive of legal fees and costs except that, in case of a claim brought in a state where provision is made for separate award of legal fees and costs, the limit shall be the sum of U. S. Dollars 58,000 (Canadian Dollars 58,580.00) exclusive of legal fees and costs (2) the carrier shall not, with respect to any claim arising out of the death, wounding, or other bodily injury of a passenger, avail itself of any defense under Article 20 (1) of said Convention or said Convention as amended by said protocol. Nothing herein shall be deemed to affect the rights and liabilities of the carrier with regard to any claim brought by, on behalf of, or in respect of any person who has wilfully caused damage which resulted in death, wounding, or other bodily injury of a passenger. (See Note Below)

Note - Rules stating any limitation on, or condition relating to, the liability of carriers for personal injury or death are not permitted to be included in tariffs filed pursuant to the laws of the United States, except to the extent provided in Rule 16 (B) (1) with respect to Tariff C.A.B. No. 17. Insofar as this rule states any such limitation or condition it is included herein, except to the extent provided in Rule 16 (B) (1) with respect to Tariff C.A.B. No. 17, as part of the tariff filed with governments other than the United States and not as part of tariff C.A.B. No. 17 filed with the Civil Aeronautics Board of the United States.

(2) Carrier's name may be abbreviated in the ticket, the full name and its abbreviation being set forth in Carrier's tariffs, and Carrier's address shall be the airport of departure shown opposite the first abbreviation of Carrier's name in the ticket, and for the purpose of the Convention the agreed stopping places (which may be altered by Carrier in case of necessity) are those places, except the place of departure and the place of destination, set forth in the ticket and any conjunction ticket issued therewith, or shown in Carrier's timetable as scheduled stopping places on the passenger's route. A list giving the full name and abbreviation thereof of each Carrier in this tariff is set forth on pages 5 and 6.

(3) To the extent not in conflict with the provisions of subparagraphs (1) and (2) above, all carriage hereunder and other services performed by each Carrier are subject to:

(a) applicable laws (including national laws implementing the Convention or extending the rules of the Convention to carriage which is not "international carriage" as defined in the Convention), government regulations, orders and requirements;

Exception of KLM: Without prejudice to Rule 16(B)(1) all rights and liabilities of KLM arising out of, or in connection with the contract of carriage, or in connection with any transportation or other services offered or performed pursuant thereto, shall be governed by the national law of The Netherlands.

(b) provisions set forth in the passenger's ticket;

(c) applicable tariffs:

(Continued on next page)

For explanation of abbreviations and reference marks used but not explained on this page, see Page 6.

ISSUED: February 5, 1974 | EFFECTIVE: March 7, 1974

(Printed in U.S.A.) CORRECTION NO. 645

Exhibit A Annexed to Affidavit of Richard H. Aime

The rules, regulations and charges provided herein have been filed with or submitted to each country as required by applicable international agreements.

C.T.C.(A) No. 16 C. A. B. No. 17

Trans World Airlines, Inc.
Local & Joint International Passenger Rules Tariff No. R-3

19th Revised Page 33
Cancels 18th Revised Page 33

RULE 16: LIABILITY OF CARRIERS (Concluded)

(B) Laws and Provisions Applicable (Concluded)

(3) (Concluded)

(d) except in transportation between a place in the United States and any place outside thereof and also between a place in Canada and any place outside thereof, conditions of carriage, regulations and timetables (but not the times of departure and arrival therein specified) of Carrier, which may be inspected at any of its offices and at airports from which it operates regular services.

(C) Limitation of Liability

Except as the Convention or other applicable law may otherwise require:

(1) Carrier is not liable for any death, injury, delay, loss or other damage of whatsoever nature hereinafter in this tariff collectively referred to as "damage") to passengers or unchecked baggage arising out of or in connection with carriage or other services performed by carrier incidental thereto, unless such damage is caused by the negligence of Carrier. Assistance rendered to the passenger by Carrier's employees in loading, unloading, or transshipping baggage shall be considered as gratutious service to the passenger. AZ and SAB are not liable for damage to such unchecked baggage incurred during, or as a result of such service, irrespective of the negligence of carrier's employees. (See Note, Page 32).

(2) Carrier is not liable for any damage directly and solely arising out of its compliance with any laws, government regulations, orders or requirements or from failure of passenger to comply with same, or out of any cause beyond carrier's control.

(3) Any liability of carrier is limited to †$20.00(250 French gold francs, consisting of 65½ milligrams of gold with a fineness of nine hundred thousandths) per kilogram in the case of checked baggage and †$400.00(5000 French gold francs) per passenger in the case of unchecked baggage or other property, unless a higher value is declared in advance and additional charges are paid pursuant to carrier's regulations. In that event the liability of the carrier shall be limited to such higher declared value. In no case shall the carrier's liability exceed the actual loss suffered by the passenger. All claims are subject to proof of amount of loss.
Exception: This provision is applicable to AF only when carriage on the lines of AF originates in the U.S.A. or Canada. In all other cases, any liability to AF is limited: (a) in the case of checked baggage, to the actual value of such baggage or 250 gold francs per kilogram, whichever is less; (b) in the case of unchecked baggage, to the actual value of such baggage or 5,000 gold francs per passenger, whichever is less.

(4) (a) In any event liability of Carrier for delay of a passenger shall not exceed 125,000 French gold francs, or its equilvalent.
(b) In any event liability of Carrier for death or injury shall not exceed 125,000 French gold francs, or its equilvalent. (See Note, Page 32).

(5) In the event of delivery to the passenger of part but not all of his checked baggage, or in the event of damage to part but not all of such baggage, the liability of the Carrier with respect to the undelivered or damaged portion shall be reduced proportionately on the basis of weight, notwithstanding the value of any part of the baggage or contents thereof.

(6) Carrier is not liable for damage to a passenger's baggage caused by property contained in the passenger's baggage. Any passenger whose property caused damage to another passenger's baggage or to the property of Carrier shall indemnify Carrier for all losses and expenses incurred by Carrier as a result thereof.

(7) Carrier is not liable for loss, damage to, or delay in the delivery of fragile or perishable articles, money, jewelry, silverware, negotiable papers, securities or other valuables, business documents, or samples which are included in the passenger's checked baggage, whether with or without the knowledge of Carrier.

(8) Carrier may refuse to accept any articles which do not constitute baggage as such term is defined herein, but if delivered to and received by Carrier, such articles shall be deemed to be within the baggage valuation and limit of liability, and shall be subject to the published rates and charges of Carrier.

(9) (a) Liability of Carrier for damages shall be limited to occurrences on its own line, except in the case of checked baggage as to which the passenger also has a right of action against the first or last carrier.
(b) A carrier issuing a ticket or checking baggage for carriage over the lines of other does so only as agent. (See Note, Page 32).

(10) Whenever KLM's and AZ's liability towards the passenger is limited or excluded under this Rule or under applicable laws, the passenger and all other persons or agencies who are party to the contract of Carrier shall hold KLM and AZ free and harmless from any third party claims concerning passengers or baggage instituted in excess of such limitations or notwithstanding such provisions excluding KLM's and AZ's liability.

(11) Carrier shall not be liable in any event for any consequential or special damage arising from carriage subject to this tariff, whether or not Carrier had knowledge that such damages might be incurred.

(12) "Any exclusion or limitation of liability of Carrier under this tariff or the ticket shall apply to agents, servants, or representatives of the Carrier acting within the scope of their employment and also to any person whose aircraft is used by the Carrier and its agents, servants or representatives acting within the scope of their employment."

For explanation of abbreviations and reference marks used but not explained on this page, see Page 6.

ISSUED: February 5, 1974 EFFECTIVE: March 7, 1974 (Except as Noted)

(Printed in U.S.A.)

†Effective February 6, 1974. Issued on 1 day's notice under Special Tariff Permission No. 33232 of the Civil Aeronautics Board.

CORRECTION NO. 646

The rules, regulations and charges provided herein have been filed with or submitted to each country as required by applicable international agreements.

NO CHANGE ON THIS PAGE.
C.T.C.(A) No. 16 C.A.B. No. 17

Trans World Airlines, Inc.
Local & Joint International Passenger Rules Tariff No. R-3

20th Revised Page 34
Cancels 19th Revised Page 34

RULE 17: TIME LIMITATIONS ON CLAIMS AND ACTIONS

(A) No action shall lie in the case of damage to baggage unless the person entitled to delivery complains to the carrier forthwith after the discovery of the damage, and, at the latest, within seven days from the date of receipt; and in the case of delay, or loss, complaint must be made at the latest within 21 days from the date on which the baggage has been placed at his disposal (in the case of delay), or should have been placed at his disposal (in the case of loss). Every complaint must be made in writing and dispatched within the time aforesaid. Where carriage is not "international carriage" as defined in the Convention, failure to give notice shall not be a bar to suit where claimant proves that (1) it was not reasonably possible for him to give such notice, or (2) that notice was not given due to fraud on the part of carrier, or (3) the management of carrier had knowledge of damage to passenger's baggage.

(B) Any right to damages against carrier shall be extinguished unless an action is brought within two years reckoned from the date of arrival at the destination, or from the date on which the aircraft ought to have arrived, or from the date on which the carriage stopped.

RULE 18: OVERRIDING LAW

Insofar as any provision contained or referred to in the ticket or in this tariff may be contrary to a law, government regulation, order or requirement which severally cannot be waived by agreement of the parties, such provisions shall remain applicable and be considered as part of the contract of carriage to the extent only that such provision is not contrary thereto. The invalidity of any provision shall not affect any other part.

RULE 19: MODIFICATION AND WAIVER

No agent, servant or representative of Carrier has authority to alter, modify or waive any provisions of the contract of carriage of of this tariff.

RULE 20: ROUND TRIP FARES

(A) General

(1) When a round trip ticket is purchased prior to commencement of carriage, the fare for a round trip shall be the round trip fare published in the applicable tariff(s) of Carrier via the desired routing and for the class of service used.

(B) Application to Combined Service, and/or Special Short Limit Validity

(1) When round trip, first class, economy or short limit fares are applicable between the same points, round trip passengers will be charged the sum of 50% (computed in accordance with Rule 29) of the round trip fares applicable to the classes of service used; provided that:

(a) such fares, which by their terms are not combinable with other fares, shall not be used in the construction of round trip fares, and

(b) the shortest validity period applicable to any such fare used shall apply to the entire round trip.

#RULE 21: CIRCLE TRIP FARES

When a circle trip ticket is purchased prior to commencement of carriage, the fare for such circle trip shall be the sum of 50 percent (computed in accordance with Rule 29) of the applicable round trip fares for the class of service to be used for the respective sections of carriage, constructed from point of origin via the desired routing, that produces the lowest fare for the circle trip; provided that:

(a) fares which by their terms are not combinable with other fares, shall not be used in the construction of circle trip fares; and

(b) if the fare for a circle trip travelled in one class of service constructed as specified above is less than the highest direct route round trip fare applicable to the same class of service between any two points on the circle trip route, such highest direct route round trip fare shall apply; and

Exception: This provision shall not apply to circle trip fares constructed for carriage completely around the world in the same general direction.

(c) the fare for a circle trip travelled partly in one class of service and partly in another class of service shall be constructed in accordance with the provisions of Rule 5(D)(3),(4) and (5) herein.

(d) the shortest validity period applicable to any fare used shall apply to the entire circle trip.

(e) the circle trip fare authorized herein will not apply when any part of the circle trip is via the services of a Non-Scheduled carrier or on a charter or Military flight.

Departure from the terms of sections 221.50 and 221.61 of its Economic Regulations authorized by the Civil Aeronautics Board (5800).

For explanation of abbreviations and reference marks used but not explained on this page, see Page 6.

ISSUED: February 5, 1974

EFFECTIVE: March 7, 1974

(Printed in U.S.A.)

CORRECTION NO. 647

Reply Affidavit of Stanley J. Levy in Support of Motion.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

STANLEY J. LEVY, being duly sworn, deposes and says:

1. I am an attorney and a member of the firm of Kreindler & Kreindler, attorneys for the plaintiffs in the within action and as such I am fully familiar with the facts and circumstances of this case. This Reply Affidavit is submitted in reply to defendants' Memorandum of Law opposing plaintiffs' motion to strike the defendants' Second Affirmative Defense.

2. As is set forth more fully in plaintiffs' original Memorandum of Law and in the accompanying Reply Memorandum, the Warsaw Convention provides a damage limitation for personal injury and wrongful death for the benefit of international air carriers. The damage limitation does not extend to the carrier's employees.

3. Defendants contend that Article 27 of the Convention reveals an unexpressed intention on the part of the Convention's drafters to apply Warsaw's limitation of liability to the corporate officers and employees of a carrier. Defendants' interpretation of Article 27 assumes that the Convention was limited to corporate carriers. This assumption is incorrect for Warsaw clearly applies to

private fliers as well as corporate carriers. Warsaw Minutes 92; E. Mapelli Lopez, El Contrato de Transporte Aereo Internacional 246-50 (1968) [attached as Exhibits L and O. Even today, many private individuals function as carriers as selected pages of the World Aviation Directory which are attached as Exhibit M demonstrate.

4. The preliminary meeting of CITEJA and the Minutes of Warsaw itself fails to substantiate defendants' claim that the delegates intended to extend personal immunity to officers or employees of an air carrier. The Warsaw Minutes, pp. 157-158, are attached as Exhibit N.

5. In addition to *Pierre* v. *Eastern Airlines, Inc.*, 152 F.Supp. 486 (D.N.J. 1957), a second case squarely on point has come to the plaintiffs' attention. In *Stratton* v. *Trans Canada Air Lines,* 27 D.L.R.2d 670 (B.C.Sup.Ct. 1961), *aff'd on other grounds,* 32 D.L.R.2d 736 (B.C.Ct.App. 1962), the Court stated that the Convention's limitation of liability does not apply to the employees of a carrier. copies of *Stratton* and its affirming opinions are attached as Exhibit P.

6. In interpreting the Warsaw Convention, this Court may properly refer to the subsequent attempts to amend Warsaw, and particularly, the Hague Protocol and the Guadalajara Convention. *Day* v. *TWA,* (2d Cir., filed Dec. 22, 1975, Slip Opinion 1231); *Block* v. *Compagnie Nationale Air France,* 386 F.2d 323 (5th Cir. 1967), *cert. denied* 392 U.S. 905 (1968). The Hague Conference proceedings reveal that the purpose of Article 25A of Hague was to amend Warsaw by extending Warsaw's damage limitation to the carrier's officers and employees since they were not covered by the Warsaw limitation. Hague Minutes 214-23, 351-56 (attached to plaintiffs' initial

Memorandum of Law as Exhibit G). Delegates to the Guadalajara Conference sought a similar extension of Warsaw's damage limitation since they also recognized that the limitation applied only to carriers. Guadalajara Minutes 134, 197 (attached as Exhibits Q and R).

7. There is no basis for defendants' reliance on TWA Local and Joint International Passenger Rule Tariff No. R-3 (hereinafter Joint Tariff). A certified copy of the complete tariff as it relates to the carrier's limitations of liability is attached as Exhibit S. The Tariff provides no support for defendants' position for the following reasons:

a. Under the law of New Jersey, New York and federal common law, a common carrier cannot limit or relieve itself or its employees of liability for the death or personal injury of fare-paying passengers. *Horelich, et al.* v. *Penna. R.R. Co.*, 13 N.J. 349, 357-58, 99 A.2d 652, 657 (1953); *Conklin* v. *Canadian Colonial Airways*, 266 N.Y. 244, 247-48, 194 N.E. 692 (1935); *United States* v. *Atlantic Mut. Ins. Co.*, 343 U.S. 236, 239 (1952).

b. Since 1954 the Civil Aeronautics Board, by Regulation, has prohibited carriers from filing tariffs which limit the carrier's liability for personal injury or death. The only exception is the damage limitation contained in Article 17 of Warsaw which is mandated by treaty. A copy of CAB Economic Regulations, 14 CFR 221.38(h) and (i) are attached as Exhibit T;

c. The Joint Tariff defendants rely on permits damage limitations for property damage and, outside the United States, personal injuries. By its own terms it provides that any damage limitation for personal injury (except as permitted by War-

saw) is excluded and not a part of the tariff filed in the United States;

d. The Warsaw Convention itself, Article 23, prohibits the carriers from imposing any additional limitation of liability beyond the specific language of the Convention.

8. There is no basis for defendants' reliance on any provision of a TWA ticket which purports to extend the carrier's limitation of liability to its servants, agents, or employees for the following reasons:

a. Contractual limitations upon the liability of a common carrier for the personal injury or wrongful death of its fare-paying passengers are contrary to public policy and invalid;

b. The "Overriding Law" provision of the Joint Tariff, Article 18, declares such contractual limitations invalid;

c. The ticket language itself is invalid because it fails to satisfy the notice requirements mandated by *Lisi* v. *Alitalia Linee Aeree Italiane*, S.P.A., 370 F.2d 508 (2d Cir. 1966).

9. The CAB has not approved any limitation of liability for personal injury or wrongful death contained in the said TWA Joint Tariff or any TWA ticket provision. Applicable CAB regulations forbid the filing of any tariff purporting to limit the carrier's liability for personal injury or wrongful death other than those relating to the Warsaw Convention. Moreover, the tariff by its own terms excludes any such damage limitation from filings before the CAB.

Reply Affidavit of Stanley J. Levy.

10. There is no basis for defendants' contention that plaintiffs' complaints should be dismissed or summary judgment awarded to defendants on the basis of a distinction between malfeasance or misfeasance as opposed to the nonfeasance of a corporate officer or employee for the following reasons:

a. The complaint fully satisfies the notice pleading requirements of the Federal Rules of Civil Procedure;

b. Under New Jersey law, the actions of the individual defendants complained of would result in defendants being found individually liable since New Jersey has discarded any distinction between malfeasance or misfeasance and nonfeasance. *Miller* v. *Muscarelle,* 67 N.J.Super. 305, 170 A.2d 437, 449-50 (App.Div. 1961), *cert. denied* 36 N.J. 140, 174 A.2d 925 (1961);

c. Under the law of New York, an employee who accepts the power, duty and responsibility which his employer is legally obligated to perform, is liable for his negligence which includes nonfeasance as well as misfeasance, *Michaels* v. *Lispenard Holding Corp.,* 11 App. Div. 12, 201 N.Y.Supp.2d 611 (1st Dept. 1960). In this case the Federal Aviation Administration has, by Regulation, imposed on TWA the duty to establish and maintain a security and screening system for the safety of passengers and the individual defendants have undertaken the duty and responsibility for the system. A copy of the Federal Air Regulation, 14 CFR 121.538, is attached as Exhibit U;

d. It is clear, under either law, that any corporate employee or agent who participates in or directs the

commission of a tortious act may be held individually liable.

11. Plaintiffs' discovery will establish not only that defendants were responsible for the installation of the TWA security system but that they exercised day to day decision-making authority. Moreover, many areas of direct misfeasance will be explored during the depositions which has not yet been commenced. Plaintiffs believe that they will establish the liability of the individual defendants.

12. In addition to the attached Exhibits, plaintiffs refer to and incorporate herein those unreported cases, authorities, treaties and certain minutes from the Warsaw Convention and Hague Protocol proceedings attached as Exhibits A through K and submitted with plaintiffs' initial Memorandum of Law.

WHEREFORE, your deponent respectfully requests that the plaintiffs' motion be granted striking defendants' Second Affirmative Defense or, in the alternative, for partial summary judgment in plaintiffs' favor with respect to such affirmative defense.

Dated: New York, New York
February 2, 1976

STANLEY J. LEVY

(Sworn to February 2, 1976)

EXHIBIT L--WARSAW MINUTES, PAGES 92, 93 AND 97 ANNEXED TO REPLY AFFIDAVIT OF STANLEY J. LEVY

The President. Does anyone want the floor on this question?

I put the Yugoslov proposal to a vote.

(The proposal is rejected).

The President. Mr. Ambrosini has the floor.

Mr. Ambrosini (Italy). Gentlemen, I would like to make a little observation which is very grave in its consequences.

We have examined the draft of convention in its main lines concerning liability.

I would like to call the attention of the Conference to the fact that, when dealing with transports made by an enterprise or any person, with remuneration, one shall apply the system of liability as it is established by the convention, i.e., the liability based on the idea of the fault and limited liability.

But some transports are made as an accomodation or free of charge. I wonder what kind of rule of liability will be applied in such a case?

If we do not say anything, it shall always be, no doubt, a regime of liability more severe than that of the convention.

I must recall here the jurisprudence which was established for free transportation by car.

(92)

French jurisprudence says that the owner of a car who transports as an accomodation, any passenger, answers...

Several voices - No! No!

Mr. Ambrosini (Italy). At any rate, there have been judgments to that effect and we also have this system: Italian law provides for the case and decides that the carrier, in such a case, is liable in case of accident.

I would like to point out to the Conference that, since we have not studied a draft of convention concerning friendly transports, it might be useful to introduce a reservation in the convention or, perhaps, subject these free transports to the same rule as that covering transport with remuneration.

Mr. DeVos, Rapporteur. I should first like to point out to Mr. Ambrosini that the Convention does apply to transportation without fee where commercial enterprises are concerned.

It is provided by Article 1, paragraph 1, which, besides, shall be submitted to the editing committee, but which, at present, says:

> "The present Convention applies to international transportation of passengers, goods and luggage performed by aircrafts against remuneration or by an enterprise of air transportation with or without remuneration."

Tourism transports as such constitute an entirely new problem, which does not enter in this matter. We must limit our efforts and I fear that we cannot embark on this road.

Mr. Giannini (Italy). I think that we have here a large number of Delegates who are also members of the TICJAE. They know, therefore, that we have entrusted Mr. DeVos with the preparation of a preliminary draft of convention on transportation carried out as a friend.

I believe, however, that Mr. Ambrosini's remark must be noted. Of course we find ourselves in the slightly strange situation where, after we have approved our convention, we shall have, for a while, this great difficulty that the transports performed as friend shall be settled as far as liability is concerned, under more serious conditions than regular and commercial transports.

These things happen, when one makes a progressive codification.

I believe, on the other hand, that in order to do something, to indicate that the conference took into consideration this strange situation we could make a wish to invite the TICJAE to hasten its work on this question which wish could be passed on to the editing committee.

(2&93)

The President - Are there any objections to the adoption of this wish?... I put it to a vote.

(Adopted)

The President. Gentlemen, we have finished the first part of our work, i.e., the examination of questions of substance of first importance.

We only have now the questions of wording which shall be referred to the small editing committee, and the questions of substance of second importance.

I ask you if it would not be useful to discuss these questions of second importance in small committee, perhaps the preparatory committee which worked so well, but which would be reinforced by the representatives of the Delegations which submitted amendments, as it was proposed. We would have to add to the preparatory committee representatives of Czechoslovakia, Hungary, Greece, Yugoslavia.

I do not mention the representative of Sweden, who, unable to come to the committee's sessions, asked not to be appointed.

Do you agree with this working procedure? (The proposals are accepted).

We shall be able to, at the same time, to designate the members of the editing committee whose work must also begin. If you agree, I would suggest for this committee

(93)

refers to the owner and operator of the aircraft.

> If it is wished that the carrier be the air transportation entrepreneur or its exploiter, in the meaning of economic control of the craft and established by German, Swiss, Hungarian, Dutch jurisprudence, etc., or that he should be the one for whose account the aircraft is exploited, according to Danish law; and if it is wished to conform to the convention the concept of solidarity provided by the Polish law, art. 71, between the owner and the carrier, or that of Brazilian law, between the pilot and the shipowner;
>
> If it is wished to bring closer to the general formula the English concept of hire, in air transportation, characterized by the period of contract, which concept exists in the laws of many States of North America..." this goal could be achieved by qualifying the carrier on an equality with the transport.

To this effect, I would propose, save a better wording:

> The carrier shall be considered the person who owns, charters or manages an aircraft, uses it individually or jointly in the transportation of persons and goods, within the meaning of this convention, and in conformity with national regulation."

As far as this Brazilian proposal is concerned, the commission felt that this problem was outside the realm of this convention. Since, in this article, we have made statements, definitions for practical reasons, that is to say that codification of private air law is made progressively, we have to anticipate a bit, we have examined certain problems which touch upon other conventions. But since in this case there was no

necessity to define the carrier, we thanked our colleague from Brazil, who furnished a great effort, and we have referred his proposal to the T.I.C.J.A.E. for its consideration. Thus no decision has to be taken.

We have, on the other hand, in paragraph 1, a proposal of the Japanese Delegation upon which it does not insist.

There remains the point the Rapporteur spoke about, and on which the conference must take a stand.

The President. I believe the article should be sent back to the editing committee which shall give us a final text.

No one is opposed? It is so decided.

Mr. DeVos, Rapporteur. In Article 2, we have a British proposal which would give the right to the Government of the United Kingdom not to apply the convention when dealing with transports performed by the State.

This reservation is very serious. Since it concerns transports performed by the State on any ground, by any organ of Government which can evoke the prerogatives of the Crown, the Convention shall not apply.

Our commission has felt that this question should be

A 143

EXHIBIT M--WORLD AVIATION DIRECTORY, FALL 1975
(SELECTED PAGES) ANNEXED TO REPLY
AFFIDAVIT OF STANLEY J. LEVY

OUR THIRTY-SIXTH ANNIVERSARY

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A 114

Exhibit M Annexed to Reply Affidavit of Stanley J. Levy

SPRINGFIELD AIR SERVICE, INC. (A-1375) Box 864, Springfield, Mass. 01101 (Tel. 413 739-5501) T. H. Deyampert, pres.
Equipment: 1 Cessna U-206C
(Scheduled cargo carrier)

STAR AVIATION CORP. (A-1378) Stapleton Int'l Airport, Denver, Colo. 80207 (Tel. 303 333-9444) L. Hollingsworth, pres.
Equipment: Piper PA-28-140, Piper PA-31-350, Cessna 150, Cessna 177RG, Cessna 182, Beech 55, Mitsubishi Mu-2G

***SUBURBAN AIRLINES, INC., Sub.-Reading Aviation Service, Inc. (A-1380)** (Mail: Box 1201, Reading, Pa. 19603) Municipal Airport, Reading, Pa. (Tel. 215 375-8551). Arthur M. Horst, pres.
Equipment: 5 DHC-6 Twin Otters (STOL); 1 Beech 99
(Commuter air carrier)

***SUMMIT AIRLINES (Formerly Del/Air Cargo Commuter Airlines) (A-1385)** Philadelphia Int'l Airport, Philadelphia, Pa. 19153 (Tel. 215 521-4800). J. W. Wear, exec. v. p.; H. B. Budd, Jr., v. p.-mktg.; R. R. Shamblin, v. p.-opns.
Equipment: 8 SH-7 Skyvans; 1 BN Islander
(Commuter carrier)

SUN AIRLINES INC. (A-1390) Box 22703, Tampa, Fla. 33622 (Tel. 813 884-3635)
(Commuter air carrier)

***SUN VALLEY KEY AIRLINES (A-1392)** Box AMF 22065, Salt Lake City, Utah 84122 (Tel. 801 359-7673). E. B. Rich, pres.; J. C. Bacon, v. p.-finance & admin.; R. A. Soltys, dir.-mktg.; N. Johnson, dir.-flight opns.
Equipment: 3 Twin Otter 300's, 6 Piper Navajos; 1 Beech Baron
(Commuter air carrier & charter)

SWIFT AIR SERVICE (A-1395) Air Terminal Bldg., Lindbergh Field, San Diego, Calif. 92101 (Tel. 714 235-7311). J. W. Dowdle, owner & opns. mgr.
Equipment: Aztec, Apache; Bonanza

SWIFT-AIRE LINES (A-1400) (Mail: Box W, San Luis Obispo, Calif. 93406) County Airport, San Luis Obispo, Calif. (Tel. 805 544-7700). C. G. Wiswell, pres. & gen. mgr.; S. Larson, v. p. & sec'y; D. Johnson, chief pilot; M. Cotton, dir.-maint.
Equipment: 1 Navajo, 6 DH Herons
(Commuter air carrier)

TAMPA AIR CENTER (A-1405) 4630 Douglas St., Tampa, Fla. 33614. L. B. Canady, pres.
U.S. Postal Service carrier & charter)

TANANA AIR TAXI, INC. (See A [illegible] **ca Central Air (A-432)**

***TILCO AVIATION (A-1410)** Suite 220, 300 Louisiana Ave., Baton Rouge, La. 70802 (Tel. 504 387-4844)
(Commuter air carrier & charter)

TOBEY, INC. d/b/a Personal Air Transport (A-1415) 27 Ivy Lane, Wethersfield, Conn. 06109 (Tel. 203 249-4708) O. G. Tobey, pres.
(U.S. Postal Service carrier & charter)

TRANS AERO SYSTEMS CORP. (A-1420) (Mail: Box 429, San Jose, Calif. 95103) 362 Martin Ave., Santa Clara, Calif. (Tel. 408 249-6141) V. J. McVicker, pres.; D. C. Wong, v. p.; A. Jones, mgr. opns.; Los Angeles Sta.: Int'l Airport, Airfreight Bldg. 1, Los Angeles, Calif. 90009 (Tel. 213 645-4280)
(Intrastate commuter air carrier)

***TRANS MO AIRLINES (A-1435)** Box 831, Jefferson City, Mo. 65101 (Tel. 314 635-7905). W. E. Asel, pres.; J. Dameron, chief pilot
Equipment: 4 Cessna Twins
(Commuter air carrier)

***TRANS MOUNTAIN AIR LTD. (A-1440)** 10407 N. 85th St., Municipal Airport, Longmont, Colo. 80501 (Tel. 303 776-6750)
(Commuter air carrier)

***TRANS NATIONAL AIRLINES INC. (A-1450)** Box 2785, South San Francisco, Calif. 94080 (Tel. 415 583-1873). A. S. Falconer, pres.; H. Steiner, chief pilot
Equipment: De Havilland Dove; DC-3; De Havilland stretched Dove (CJ-600)
(Cargo commuter carrier & charter)

***TRAVELAIR TAXI INC., d/b/a Island Airlines (A-1455)** Box 172, Port Clinton, Ohio 43452
Equipment: Ford Tri-Motor
(U.S. Postal Service carrier)

***TRICON INTERNATIONAL AIRLINES, INC. (A-1460)** Box 7167, Dallas, Tex. 75209 (Tel. 214 358-4338). L. A. Humphrey, Jr., pres.; J. B. Bennett, v. p.; C. G. Crider, opns. mgr.
Equipment: 1 DC-3; 8 Twin Beech D-18S's; 3 Cherokee 6's
(Cargo commuter carrier)

UPPER VALLEY AVIATION, INC. (A-1475) (Mail: Box 541, McAllen, Tex. 78501) Miller Int'l Airport, McAllen, Tex. (Tel. 512 686-1431). Isham Tatum, pres.
(Commuter air carrier & U.S. Postal Service carrier)

VALLEE AIRWAYS (A-1478) 210 Villa Rd., Streamwood, Ill. 60103
(Commuter air carrier)

***VERCOA AIR SERVICE, INC. (A-1490)** Hulman Field, Terre Haute, Ind. 47803 (Tel. 812 235-6143) W. C. Britt, pres.

A 145

Exhibit M Annexed to Reply Affidavit of Stanley J. Levy

DUTTON ENTERPRISES (A-5712) Sand Springs Airport, Sand Springs, Mont. 59077 (Tel. 406 435-6144). J. M. Dutton, mgr.
(Livestock & predator control & charter)

DWIGHT AERO SERVICE (A-5715) RR 1, Box 161, Dwight, Ill. 60420 (Tel. 815 584-2486). D. Constantine, owner.
Equipment: Beech Travelaire

DWYER AIRCRAFT SALES INC. (A-5720) (Mail: Box 239, Mason City, Iowa 50401) Municipal Airport, Mason City, Iowa

DYER AERO SERVICE (A-5725) Municipal Airport, Dyersburg, Tenn. 38024. W. E. Braese, pres.

DYER THE FLYER INC. (A-5728) Box 81, Marshall, Mo. 65340

DZIUK AERO SERVICES, INC. (A-5730) 3600 Int'l Airport Rd., Anchorage, Alaska 99502 (Tel. 907 277-4501). F. Aubuchon, pres.; E. L. Phillips, v. p.
Equipment: Lear Jet

EASTEX AVIATION, INC. (A-5735) Gregg County Airport, Longview, Tex. 75601 (Tel. 214 643-2244). Johnny Walker, mgr.

E. C. AVIATION SERVICES (A-5740) 725 N. Hamilton Rd., Columbus, Ohio 43219

ECO TECH INC. (A-5742) 400 Kidder St., Wilkes-Barre, Pa. 18702

E & I INC. (A-5745) 4160 Ravenswood Rd., Fort Lauderdale, Fla. 33312

EJR TRANSPORT & SERVICE LTD. (A-5748) 65 Heather Dell Rd., Ardsley, N. Y. 10502

E O AIR (A-5750) Box 184, Shelby, N. C. 28150

E R AVIATION INC. (A-5752) Box 545, Eagle River, Wis. 54521

ETA AIRLINES (A-5755) 756 Swing Lane, Medford, Ore. 97501

EZ AIR CORP. (A-5760) 2386 Palomar Airport Rd., Carlsbad, Calif. 92008 (Tel. 714 729-2322). Wallace White, mgr.

EAGLE AIR SERVICES (A-5765) 5192 W. Military Hwy., Chesapeake, Va. 23321

EAGLE AIRLINES (A-5768) Box 3435, W. Sedona, Ariz. 86340

EAGLE AIRWAYS INC. (A-5770) 4103 Dandy Trail, Indianapolis, Ind. 46254

***EAGLE AVIATION INC.** (A-5772) Columbia Metro Airport, West Columbia, S.C. 29169 (Tel. 803 794-8555). M. L. Laughlin, pres.

EAGLE AVIATION, INC. (A-5775) 4307 Donald Douglas Dr., Long Beach, Calif. 90808

***EAGLE AVIATION, INC.** (A-5778) Kanawha Airport, Charleston, W. Va. 25311 (Tel. 304 346-0707). V. N. Green, pres.; Duane Kincaid, opns. mgr.; Judy Romano, office mgr.
Equipment: Navajo, Cessna 206; King Air C-90, Beech Travel Air

EAGLE AVIATION INC. (A-5780) Municipal Airport, Faribault, Minn. 55021. G. P. Lundquist, gen. mgr.
Equipment: 2 Piper Twin Comanche B's; Beech Bonanza G 35; 4 Piper Cherokee 140's

EAGLE CREEK AVIATION INC. (A-5785) 4101 Dandy Trail, Indianapolis, Ind. 46254

EAGLE ENTERPRISES (A-5788) Rt. A, Box 86, Lower Lake, Calif. 95457

EAGLE FLIGHT CENTER (A-5790) Portland Hillsboro Airport, Hillsboro, Ore. 97123. C. D. Johnson, pres.; C. A. Gatewood, v. p.; R. Turner, sales mgr.
Equipment: Aero Commander, Grumman American, Bellanca Aircraft, Mooney Aircraft

EAGLE FLIGHT SERVICES (A-5792) 6076 Brockport Spencerport Rd., Brockport, N. Y. 14420

EARLYAIRE CHARTER (A-5795) Grissom Airport, Bedford, Ind. 47421

EARNHARDT AVIATION (A-5800) 138 99th St., Stinson Field, San Antonio, Tex. 78214

EAST BAY HELICOPTERS, INC. (A-5805) Box 628, Oakland, Calif. 94604. A. Mahoney, pres.
Equipment: Hughes 269 B, Sikorsky S-55

EAST CENTRAL LINES INC. (A-5810) Rt. 2, Lebanon Springfield Airport, Springfield, Ky. 40069. William Crowley, pres.

EAST KANSAS CITY AVIATION INC. (A-5815) Box 174, Grain Valley, Mo. 64029 (Tel. 816 229-8693). J. F. Hamilton, pres.

EASTAIR INC. (A-5820) Box 155, Cadiz, Ohio 43907 (Tel. 614 942-3817). L. E. Harris, mgr.
Equipment: Beech Baron, Piper PA-28R-200 Arrow

EASTERN AVIATION FLIGHT ACADEMY (A-5822) Box 398, Cox Dayton Municipal Airport, Vandalia, Ohio 45377

EASTERN CARRIBEAN AIRWAYS (A-5825) Box 6981, Sunny Isle, St. Croix, V. I. 00820

EASTERN FLYING SERVICE INC. (A-5830) Essex Skypark, Baltimore, Md. 21221

EATON FLYING SERVICE, INC. (A-5835) Fitch H. Beach Airport, Charlotte, Mich. 48813. William M. Wolbeck, pres.

ECK-AIR SERVICE (A-5840) 23536 Ave. 204, Strathmore, Calif. 93267 (Tel. 209 568-1212)
(Air taxi for U.S. Forest Service only)

ECONOMY AVIATION (A-5842) 8603 Mission Rd., San Antonio, Tex. 78214

EDDY FLYING SERVICE, INC. (A-5845) Box 828, Findley, Ohio 45840

EDE-AIRE (A-5848) Becker County Airport, Detroit Lakes, Minn. 56501. E. G. Danich, mgr.

HARTSOE AVIATION (A-7738) Box 207, La Porte, Tex. 77571

***HARTZOG AVIATION INC. (A-7740)** Box 1060, Rockford, Ill. 61109 (Tel. 815 968 0491)
Equipment: Beech, Aero Commander

HARVEY CANEL SEAPLANE SERVICE, INC. (A-7745) Box 417, Harvey, La. 70058 (Tel. 504 341-1414)

HASCO, INC. (A-7750) Rt. 1, Box 385A, Baytown, Tex. 77520

HASTINGS SKYWAYS, INC. (A-7760) Municipal Airport, Hastings, Neb. 68901, Ronald K. Lilienthal, pres.

HATTIESBURG AVIATION INC. (A-7765) Rt. 9, Box 77, Hattiesburg, Miss. 39401

HATTS FLYING SERVICE & AIRCRAFT (A-7770) Medway Rd., Municipal Airport, Millinocket, Maine 04462

HAUSER ASSOCIATES INC. (A-7772) Box 1036, St. Charles, Ill. 60174

HAVRE AVIATION (A-7775) 1411 Fourth St., Havre, Mont. 59501

***HAWAII HELICOPTERS INTERNATIONAL (A-7780)** Box 1401, Lihue, Kauai, Hawaii 96766 (Tel. 808 245-2131) C. L. Childs, pres.; J. Harter, v. p. & mgr.
Equipment: Bell Jet Rangers

HAWAIIAN AIR TOUR SERVICE (HATS) (A-7785) 2371 Kalakaua Ave., Honolulu, Hawaii 96815 (Tel. 808 841-8087) H. Mueller, pres.
Equipment: 3 Herons, 4 Doves, 1 Aero Commander

HAWK AVIATION (A-7790) Box 1981, Municipal Airport, Farmington, N.M. 87401

***HAWKE FLYING SERVICE (A-7800)** (Mail: Box 1056, Modesto, Calif. 95353) Modesto Airport, Modesto, Calif. (Tel. 209 529 8618) Darold Jolliff & Betty Jolliff, owners
Equipment: Cessnas, Pipers

HAWKINS & POWERS AVIATION, INC. (A-7805) Box 391, Greybull, Wyo. 82426 (Tel. 307 765-4482). D. Hawkins, pres.
Equipment: 3 Fairchild UH 12E, 1 Fairchild SL4, 1 Fairchild SL3, 3 Fairchild 12D, 1 Kaman 600, 1 Bell 206B, 1 Hughes 500

HAWTHORNE AIR SERVICES INC. (A-7810) Box 1097, Municipal Airport, Hawthorne, Nev. 89415

***HAWTHORNE AVIATION (A-7815)** (Mail: Box 10005, Charleston, S.C. 29411) Municipal Airport, Charleston, S.C. (Tel. 803 744 2581) V. B. Strickland, pres.
Equipment: Pipers

HAWTHORNE AVIATION INC. (A-7820) S. Terminal Byrd Airport, Sandston, Va. 23150 (Tel. 804 222 7256) D. S. Hawthorne, gen. mgr.
Equipment: 1 Bell 47J 2, 1 Cessna 172

HAYES AIR SERVICE INC. (A-7825) Rt. 1, Box 173, Broseley, Mo. 63932 (Tel. 314 785 8638) L. E. Hayes, pres.; J. E. Hayes, v. p.; C. H. Bean, Jr., flight instructor; C. W. Tate, dir. maint.

M. D. HAYLES LUMBER INC. (A-7828) Box 4, Fernwood, Miss. 39635

HAYS AVIATION (A-7830) Municipal Airport, Russell, Kans. 67601

HAYWARD AVIATION (A-7835) Rt. 6, Hayward, Wis. 54843

HEART OF MAINE AVIATION, INC. (A-7840) Box 476, Waterville, Maine 04901 (Tel. 207 872 5555). J. B. Gibbons, opns. mgr.
Equipment: Skyhawk; Arrow, Seneca, Aztec

HEART OF THE NORTH AVIATION, INC. (A-7845) Box 511, Gaylord, Mich. 49735 (Tel. 517 732 9423) Carol L. Christensen, v. p.

HEBER SPRINGS FLYING SERVICE (A-7855) Heber Springs Airport, Heber Springs, Ark. 72543 (Tel. 501 362 3294) E. U. Lane, owner

HEBER VALLEY FLYING SERVICE, INC. (A-7860) RR 1, Box 333, Heber City, Utah 84032

HEBRON AVIATION (A-7862) Box 1272, Huron, S. D. 57350

***HECK FLYING SERVICE, INC. (A-7865)** RR 4, Box 177, Willard, Ohio 44890 (Tel. 419 935 8193) A. W. Heck, pres.

HECKS INC. (A-7870) Box 1012, Kahawha Blvd., E., Charleston, W. Va. 25301

HECTOR FLYING SERVICE (A-7875) RR 1, Chickasha, Okla. 73018 (Tel. 405 224 0330) George H. Hector, mgr.

HELI 500 (A-7878) 2120 W. 15th St., Long Beach, Calif. 90813

HELI LIFT INC. (A-7885) Box 5C, Lafayette, La. 70501

HELICOPTER & AIRPLANE SERVICES CORP (HASCO) (A-7890) 7920 Airpark Rd., Gaithersburg, Md. 20760 (Tel. 301 948 5611) A. M. Carey, pres.; L. L. Middaugh, v. p.; J. A. Kuhr, dir. maint.
Equipment: 2 Hughes 300's, 1 Fairchild FH 1100

HELICOPTER AIRWAYS (A-7895) 4441 Bragg Blvd., Fayetteville, N.C. 28303 (Tel. 919 867 2136) Curt Fulton, mgr.
Equipment: Hughes 500

HELICOPTER AIRWAYS OF INDIANA, INC. (A-7905) 31 First St., S.W., Carmel, Ind. 46032 (Tel. 317 844 0573) C. W. Farrar, pres.
Equipment: Bell 47G2

HELICOPTER AIRWAYS SERVICE, INC. (A-7910) Metropolitan Airport, Detroit, Mich. 48242

53186 (Tel. 414 547-8281) D. Pabst, Jr., pres.

SPRINGDALE AIR SERVICE INC. (A-13865) Box 811, Springdale, Ark. 72764 (Tel. 501 751-4462). V. Thompson, pres.
Equipment: Aztec; Twin Commanche

SPRINGFIELD FLYING SERVICE INC. (A-13870) 2546 E. Division St., Springfield, Mo. 65803 (Tel. 417 862-2418)

SPRINGFIELD HELICOPTERS INC. (A-13875) 2141 Selma Pike, Springfield, Ohio 45505

SPRINGHILL AVIATION CO. (A-13878) Rt. 1, Box 97-A1, Springhill, La. 71075

SPRITE-FLITE JETS INC. (A-13880) Box 11761, Lexington, Ky. 40511

STAFFORD AIR SERVICE (A-13890) Box 820, Buffalo, Wyo. 82834

STANDARD AIRWAYS (A-13892) 3320 Old Spanish Trail, El Paso, Tex. 79904

STANGEL'S FLIGHT SERVICE (A-13895) Box 157, Enterprise, Ore. 97828 (Tel. 503 426-3562)

STANLEY CONSTRUCTION CO. (A-13900) Box 108, Ashland, Va. 23005

STANLY AIRCRAFT SALES & SERVICE, INC. (A-13905) Box 775, Albemarle, N.C. 28001 (Tel 704 982-6513). H. L. Smith, owner & mgr.
Equipment: Piper PA-28 180

STAR AVIATION CORP. (A-13915) 59819 Indian Trail Rd., New Haven, Mich. 48048

STAR AVIATION INC. (A-13920) (Mail: Box 396A, Spearfish, S.D. 57783) Black Hills Airport, Spearfish, S.D. (Tel. 605 642-9987). D. P. Curtis & Madaline H. Curtis, managers
Equipment: Cessna 182; Cherokee 6, Mooney M-20

STAR FLIGHT (A-13925) Rt. 3, Smith Field, Siloam Springs, Ark. 72761

STARVATION SKY RANCH (A-13930) Box 898, Duchesne, Utah 84021

STEED FIELD INC. (A-13935) RR 4, Portland, Ind. 47371 (Tel. 317 726-4901). D. R. Shreeve, mgr.

STEED FLYING SERVICE (A-13940) Box 582, Prescott, Ark. 71857

STEELE BURNAND ASSOCIATES, INC. (A-13945) 4500 Campus Dr., Suite 420, Newport Beach, Calif. 92660 (Tel. 714 540-4599). R. Steele, v p.
Equipment: King Air 100

STERLING AIR (A-13948) 2305 Denton Rd., Dothan, Ala. 36301

STERLING AIR SERVICE, INC. (A-13950) Rt. 3, Sterling, Colo. 80751 (Tel. 607 324-2742). R. V. Wells, pres.

STERLING AIRWAYS INC. (A-13952) RD 2, Airport Rd., Hornell, N.Y. 14843

E. F. STEVENS INC. (A-13955) Box 177, Rt. 72, Manahawkin Airport, Manahawkin, N.J. 08050

*STEVENS BEECHCRAFT INC., Sub.-J. P. Stevens (A-13960) Box 589, Greenville Spartanburg Jetport, Greer, S.C. 29651 (Tel. 803 877-6451). R. H. Cutherston, pres.
Equipment: 1 DC-3; 1 Fan Jet Falcon; 1 Grumman Gulfstream 1

STEVERNOL AVIATION (A-13965) 109 E. Houghton Ave., West Branch, Mich. 48661

STEVE'S AIR SERVICE (A-13968) Box 367, Rangeley, Maine 04970

STIKINE AIR SERVICE INC. (A-13975) Box 631, Wrangell, Alaska 99929, C. L. Traylor, pres.

STILLWATER PUBLISHING CO. (A-13980) Box 231, Stillwater, Okla. 74074 (Tel. 405 372-7800). J. R. Bellatti, pres.; L. Matthews, chief pilot

STOCKERT FLYING SERVICE INC. (A-13990) Michiana Regional Airport, South Bend, Ind. 46628 (Tel. 219 233-8285). H. E. Glaser, pres.
Equipment: King Air, Turbo Commander; Cessna 310; Aztec, Navajo, 2 Beech 18's

STOCKHILL AVIATION, INC. (A-14000) City Airport, Kalispell, Mont. 59901. L. E. Stockhill, pres.

GRADY STONE AVIATION INC. (A-14010) Municipal Airport, Ft. Smith, Ark. 72901

STONE MOUNTAIN AVIATION INC. (A-14015) 6600 Bermuda Rd., Stone Mountain, Ga. 30083 (Tel. 404 469-0161). J. Criswell, gen. mgr.; J. Green, chief air taxi div.
Equipment: Aero Commander 500B

STONE-AIR CHARTER (A-14025) 5786 Spring Lake Rd., Memphis, Tenn. 38134

STONEWALL AEROPLANE CO. (A-14028) Box 602, Monroe, Wis. 53566

STONINGTON FLYING SERVICE (A-14030) RR 1, Box 18, Stonington, Maine 04681

STORM FLYING SERVICE (A-14035) Municipal Airport, Iowa Falls, Iowa 50126 (Tel. 515 648-9954). R. Storm, owner.
Equipment: Piper Aztec, Comanche, Arrow; Cherokee 180, 3 Cherokee 140's; Pawnee

STOUFFER FLYING SERVICE (A-14040) Rt. 1, Box 187B, Hays, Kans. 67601 (Tel. 913 625-6618). J. Stouffer, owner.

STOVALL AIR SERVICE INC. (A-14042) Box 215, Dillingham, Alaska 99576

*STRALEY FLYING SERVICE INC. (A-14045) Municipal Airport, Clinton, Iowa 52732 (Tel. 319 242-5721). L. A. Straley, pres.

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A 118

Exhibit M Annexed to Reply Affidavit of Stanley J. Levy

TRANS-FLORIDA AIRLINES, INC. (A-14670) (Mail 777 Pearl Harbor Ave., Daytona Beach, Fla 32014) Daytona Beach Regional Airport, Daytona Beach, Fla (Tel 904 252 3053) Robert D Willman, pres.; Daniel R Willman, v. p.
Equipment: DC 3's; 2 Lockheed Constellation 049's

TRANS-GULF SEAPLANE SERVICE, INC. (A-14675) Rt. 6, Box 287AC, New Orleans, La 70129

TRANSIT AIRE AVIATION (A-14680) 3010 Dellwood Dr., Greensboro, N C 27408

TRANSPORT 75 (A-14682) 5213 W 61st St., Minneapolis, Minn 55436

TRANS-SOUTH AIRWAYS, INC. (A-14685) 250 Plaza Dr., Lexington, Ky. 40503 (Tel 606 276-1433) J. P. Gardner, pres.; K. Coleman, v. p.-opns.; R. Cray, dir. maint.
Equipment: 3 DC 3's; 1 Convair 240

*__TRANS-WEST AIR SERVICE, Div.-Aerial Applicators, Inc.__ (A-14690) (Mail 2382 W. 580 N., Salt Lake City, Utah 84101) Int'l Airport, Salt Lake City, Utah (Tel 801 322-0527) J. D. Streeter, pres.
Equipment: 1 Lear 24B; 2 Cessna 411's; 1 Cessna 182

TRANSWESTERN AIRLINES (A-14695) 3605 E. Spring St., Long Beach, Calif 90806

TRAVEL AIRE INC. (A-14705) Box 69, Simpson, Kan. 67478 (Tel 913 593 4691)

TRAVELAIR TAXI & CARGO SERVICE INC. (A-14708) 16120 Airport Rd., Lockport, Ill. 60441

TRAVEL-AIRE (A-14710) N90 W16890 Roosevelt Dr., Menomonee Falls, Wis 53051, John L. Madden, chief pilot

TRAVELERS EXECAIR INC. (A-14712) Box 490, Russellville, Ark 72801

TRAVELLEAR CHARTER SERVICE (A-14714) 8236 W. Interstate 40, Oklahoma City, Okla 73128

TREBOR INC. (A-14715) 9000 N E. Marx Dr., Portland, Ore 97220

TREGO AVIATION INC. (A-14720) Box 1226, North Platte, Neb 69101

TRIANGLE AIR SERVICE INC. (A-14730) Box 261, Olney, Ill 62450

TRIANGLE AVIATION INC. (A-14735) Box 675, Starkville, Miss 39759

TRI-CITIES AIR SERVICES, INC. (A-14740) Box 153, Kearney, Neb 68847 (Tel 308 234 1851)

TRI-CITIES SKYWAYS (A-14745) Memorial Air park, Grand Haven, Mich 49417

TRI-CITY AIR SERVICE (A-14750) Box 255, LaSalle Ill 61301

*__TRI-CITY AIRPORT__ (A-14755) (Mail Box 5905, San Bernadino, Calif 92412) 10123 Waterman Ave., San Bernardino, Calif (Tel. 213 885 3451) Mrs. E. P. Brier, co-owner

TRI-CITY AIRWAYS INC. (A-14760) Bldg. 71, Tri Cities Airport, Pasco, Wash 99301

TRICO SERVICE CORP. (A-14770) 231 W Lockwood Ave., St. Louis, Mo 63119

TRI-COUNTY COPTERS (A-14775) 11720 Laurel Dell Ave., Monte Rio, Calif 95462 (Tel. 707 865 2363) E. F. Wilkinson, owner
Equipment: Hughes 269A; Bell 47 G 5; Cessna 180

TRIM-A-PLANE SERVICE (A-14785) Detroit City Airport, Detroit, Mich 48213

TRINITY AIR SERVICE (A-14790) Box 513, Weaverville, Calif 96093 L. J. Poo, owner

TRI-SONIC INC. (A-14795) 4025 Marina Dr., Fort Worth, Tex 76135

*__TRI-STATE AERO, INC.__ (A-14800) 6101 Flightline Dr., Evansville, Ind 47711 (Tel 812 426-1221) E. C. Brasel, v. p. & gen. mgr.; T. M. Speek, pres.
Equipment: Cessna 402; Cessna 310

TRI-STATE AIRPORT (A-14805) Rt. 1, Box 262, Angola, Ind 46703

TRI-STATE AVIATION, INC. (A-14810) (Mail: Box 338, Ceredo, W Va 25507) Tri State Airport, Ceredo, W Va (Tel 304 453-1377) C. F. Evans, gen. mgr.

TRI-STATE EXCAVATORS INC. (A-14815) 7908 Cincinnati-Dayton Rd., West Chester, Ohio 45069

TRI-STATE HELICOPTERS INC. (A-14818) R. R. 5, Plymouth, Ind 46563

TROPICAIR (A-14820) Rt. 2, Box 902K, Int'l Airport, Corpus Christi, Tex 78408

TROPICAL AIRLINES (A-14830) Tallahassee Commercial Airport, Tallahassee, Fla 32303 (Tel. 904 385-4145) E. J. Hinson, mgr.

TROPICAL AIRWAYS INC. (A-14835) 999 S E. 9th Ave., Pompano Beach, Fla 33060

TROPICS INTERNATIONAL, INC. (A-14840) Box 2276, AMF, Miami, Fla 33159 (Tel 305 526-6312) J. R. Page Blair, mgn. dir.
Equipment: 1 DC 3; 2 Beech 18's

TROY FLYING SERVICE (A-14845) Rt. 3, Troy, Ala 36081

*__TUFTS-EDGCUMBE, INC.__ (A-14850) (Mail: Box 557, Elgin, Ill 60120) Elgin Airport, Elgin, Ill (Tel. 312 741 5182) G. J. Edgcumbe, pres.

TUG JOSEPHINE INC (A-14852) Rt. 1, Box 308, Galveston, Tex 77550

Exhibit M Annexed to Reply Affidavit of Stanley J. Levy

WRIGHT AIRLIFT INTERNATIONAL, INC. (A-15822) 12333 Washington Blvd., Los Angeles, Calif 90066

WRIGHT FLYTE SERVICE INC. (A-15830) Box 354, Municipal Airport, Flagstaff, Ariz. 86001

WURTSBORO SCHOOL OF AVIATION (A-15835) Wurtsboro Airport, Wurtsboro, N.Y. 12790

WURZ WURZLOW FLYING SERVICE INC. (A-15840) Box 346, Houma, La. 70360

WYMAN L. WYMAN PILOT SERVICE (A-15845) 6360 Highland Rd., Pontiac, Mich. 48054 (Tel. 313 673 8953). M. L. Wyman, owner.
Equipment: Cessna 310, Beech 18's

WYOMING CENTRAL AERO-WAYS, INC. (A-15852) Box 2286, Casper, Wyo. 82601 (Tel. 307 234-0171). N. Kohls, pres.; F. Hawley, gen. mgr.

*YANKEE AIRWAYS, INC. (A-15855) New London Waterford Airport, Waterford, Conn. 06385 (Tel. 203 443 2297) T. H. Rolfe, pres.

YANKEE AVIATION CORP. (A-15865) RR 1, Clinton, Wisc. 53525

YEARGIN AVIATION INC. (A-15870) Box 6940, Greenville, S.C. 29606 (Tel. 803 235 6302). J. C. Bowman, v.p. & gen. mgr.; J. P. Tompkins, chief pilot
Equipment: Beech B 58 Baron, G 18S, A 100 King Air

YELLOWSTONE AIR SERVICE INC. (A-15880) Box 158, Big Timber, Mont. 59011. R. W. Ferguson, pres.; R. Ferguson, v.p.

YELLOW BIRD INC. (A-15875) Lakeside Motel, Sandpoint Idaho 83864

YINGLING AIRCRAFT, INC. (A-15885) (Mail: Box 1162, Wichita, Kans. 67201) Municipal Airport, Wichita, Kans. (Tel. 316 945 3240). E. V. Yingling, pres.

*YORK AERO, INC. (A-15890) Box 58, Thomasville, Pa. 17364 (Tel. 717 792 1052). C. R. Dundore, pres.

YORK AVIATION INC. (A-15892) Box 651, Biddeford, Maine 04005

YOUNG FLYING SERVICE (A-15900) Int'l Airport, Harlingen, Tex. 78550 (Tel 512 423 0997). E. O. Young, pres.

YOUNGS FLYING SERVICE (A-15905) Lake Parlin, West Forks, Maine 04985 (Tel. 207 668 3383)

ZANTOP AIRWAYS, INC. (A-15910) Metropolitan Airport, Detroit, Mich. 48242 (Tel. 313 941-7200). L. A. Zantop, pres.; R. C. Zantop, v. p.
Equipment: Hansa Jets; Learjets

ZANTOP INTERNATIONAL AIRLINES, INC. (A-15915) Detroit Willow Run Airport, Ypsilanti, Mich. 48197 (Tel. 313 485-8900). D. A. Zantop, pres.; D. G. Zantop, v. p.; J. E. Roberts, R. H. Jacobson & Howard Fisher, v. p.'s
Equipment: 14 CV-640's (freight); 16 DC-6A/B's (freight), 9 Lockheed L-188C's

THE ZIA AIRLINES CO. (A-15918) Suite 318, First Nat'l Towers Bldg., Las Cruces, N.M. 88001

ZIMMER AVIATION (A-15920) Box 143, Municipal Airport, Brookings, S.D. 57006

ZODIAC AVIATION INC. (A-15925) 1707 Gilpin Ave., Wilmington, Del. 19806

RON ZOELLNER AVIATION, INC. (A-15930) 1618 Camp Rd., Huron, Ohio 49839 (Tel. 419 668-0130). R. Zoellner, pres.
Equipment: Cessna 320, Piper 32; Cessna 172, Cessna 150

*ZONIC AIRLINES (A-15935) Box 9477, 110 W. Missouri, Phoenix, Ariz. 85068 (Tel 602 942-2100). H. W. Bollmann, owner
Equipment: Cessna 206, Cessna 207
On Order: Westwind

ZORNIAK FLIGHT ACADEMY (A-15940) Box 13803, Santurce, P.R. 00908

*ZUNI AIR CORP. (A-15945) Box 338, Zuni, N.M. 87327

A 150

EXHIBIT N--WARSAW MINUTES, PAGES 157 TO 160 ANNEXED TO REPLY AFFIDAVIT OF STANLEY J. LEVY

I

PRELIMINARY DRAFT OF THE T.I.C.J.A.E. ACCOMPANIED BY LETTER FROM THE TI.C.J.A.E. TO THE GOVERNMENT OF THE FRENCH REPUBLIC.

Technical International Committee
of Juridical Air Experts
(T.I.C.J.A.E.)
37 Avenue Rapp - Paris (7e)
Tel.: Sigur 06-70

Paris, October 10, 1928

Mr. President,

The International Conference on Private Air Law, held in Paris, on October 27, 1925, having elaborated a Draft of Convention on the liability of the carrier in international transportation by aircrafts, has made the following motion:

> "Having established, as a sample, the list of of questions whose study should immediately follow the examination of the problem of liability of the aircraft carrier, the Conference, considering the importance, the urgency, the complexity and the technically juridical nature of these questions, expresses the wish that within a short period a special Committee of Experts be entrusted with preparing the continuation of the work of the Conference.
> This Committee would be composed of a restricted number of members.
> Its normal seat would be in Paris.
> Consequently, the Conference requests the French Government to kindly get in touch with the Governments invited to that Conference in

order to examine the future course to be given to this recommendation.
The Conference wishes that the first questions to be studied by that Committee should be:
Damage caused the goods and the persons on the ground;
Compulsory insurance;
Establishment of aeronautical registers; ownership of aircraft, real rights, mortgage;
Seizure;
Renting of aircraft;
Boarding of aircraft;
Juridical position of the commander of the aircraft;
Waybill;
Uniform rules for determination of the nationality of the aircraft."

In conformity with this motion, and at the invitation of the French Government, the Experts designated by the thirty States named on the enclosedlist, have met in Paris, on May 17, 1926.

The Committee thus constituted has taken the name of Technical International Committee of Juridical Air Experts (T.I.C.J.A.E.). It has divided between its Commissions, according to urgency and the wish expressed by the 1925 Conference, the totality of the matters of Private Air Law to be studied.

A request for it having been formulated by a certain number of Governments, the Committee has taken up, first, examination of the question of liability of the carrier in international transportation by aircraft and of the Draft of Convention elaborated by the International Conference on Private Air Law of 1925.

Study of this question was pursued during the years 1926, 1927 and 1928.

In the course of this examination, it seemed necessary to gather in a single text the questions relating to liability of the carrier in international transportation by aircraft and the air waybill.

At its Third Session held in Madrid from May 24 to May 29, 1928, the T.I.C.J.A.E. felt that it was finally possible to adopt a text of Convention on which unanimous agreement was realized and it took the following resolution:

> "The T.I.C.J.A.E. decides that the text of Preliminary Draft of Convention approved by the preceding resolution shall be transmitted; according to article 7 of its Internal Regulation, to the French Government for communication to all the Governments, with the view to summoning shortly the International Conference on Private Air Law."

In conformity with this resolution, we have the honor of transmitting to you herewith the Preliminary Draft of Convention in question, and to ask you to be good enough to submit it to all the Governments in order to call together the Second International Conference on Private Air Law, which could, according to the desire expressed by several Governments, meet during the second half of the month of September 1929.

We believe it might be useful to add to this text the minutes of the three Plenary Sessions of the T.I.C.J.A.E.,

37 Avenue Rapp, Paris.

(greetings cannot be adequately translated).

Signed: The President of the
T.I.C.J.A.E.
Laurent-Eynac.

The Secretary General
of the T.I.C.J.A.E.
Edmond Sudre.

To the Minister
for Foreign Affairs.
(Sous-Direction des Unions).
Paris.

Exhibit N Annexed to Reply Affidavit of Stanley J. Levy

REPORT

presented in the name of the Technical International Committee of Juridical Air Experts

by Mr. Henry De Vos, Rapporteur,

on the Preliminary Draft of Convention relating to documents of air transportation and to liability of the carrier in international transportation by aircraft.

The Technical International Committee of Juridical Air Experts, in the course of its meeting in Madrid in May 1928, has put the final touches to the Preliminary Draft of Convention enclosed herewith, having as its object: certain rules relating to documents of air transportation: passenger ticket, baggage check, and air waybill, as well as to the liability of the air carrier and to the limitation of this liability.

This draft is the culmination of numerous studies of preparation which have found expression in eight previous texts concerning either liability of the carrier, or the air waybill.

A first preliminary draft of Conventinn establishing the bases of liability of the carrier and the limitation

of this liability in matters of air transportation had been presented by the French Government at an international Conference held in Paris, on October 26, 1925:

This Conference established a Commission which re-drafted the text. The Preliminary Draft, thus amended was brought before the Conference on November 3d, 1925. New modifications were made on November 6, 1925.

On the other hand, a first Preliminary Draft of the waybill was presented to the Second Commission of the T.I.C.J.A.E. (created in the meantime) which met in Paris on March 30, 1927.

Following examination of this draft by the T.I.C.J.A.E. in April 1927, this text was slightly amended.

The T.I.C.J.A.E. in the course of that same meeting, decided to examine the possibility of amalgamating into one single Convention the two matters - liability and documents of transportation - and a new preliminary draft was presented in June 1927.

This text was changed following the deliberations of the Second Commission of the T.I.C.J.A.E. meeting in Brussels, from November 7 to November 10, 1927.

A new meeting of this Commission was held in Paris on March 21st and 22nd, 1928 in the course of which the

previous texts were amended.

Finally, those came back to the T.I.C.J.A.E. which gave them a definitive drafting in Madrid, in May 1928.

Before examining the articles of the preliminary draft, it is important to bring out the fact that in this field, an international entente cannot be established if it limits itself to determined problems. The text therefore is only applied to the contract of transportation in its external form, first, and in the bonds of law established between the carrier and the persons transported or who have transportation performed, next. It does not settle any other question arising from the exploitation of transportation.

Similarly, the Convention does not establish a ruling of compulsory insurance.

Similarly again, the limitation of liability being fixed from the point of view of the career, the principle of abandonment is not raised.

Since it deals with liability engaged because of the contract of a determined transportation, the Convention, of course, only applies to damages caused by the material affected to this transportation for the execution of the contract.

EXHIBIT O--ENRIQUE MAPELLI LOPEZ: "EL CONTRATO DE TRANSPORTE AIRO INTERNATIONAL" 246 TO 250 (1968) AND ENGLISH TRANSLATION ANNEXED TO REPLY AFFIDAVIT OF STANLEY J. LEVY

Translated from Spanish
CTS#6648/rjg

Enrique Mapelli López: El Contrato de transporte aéreo internacional, pp. 246-250, Ed. Tecnos, Madrid, 1968.

The Warsaw Convention basically regulates the liability of the carrier and this liability makes him a debtor to those persons who hold the corresponding right. For this reason, we understand that this Article 27, which is poorly conceived, refers fundamentally to the possibility that the debtor -- which is the carrier -- may cease to exist. The carrier will rarely be a physical person, and as the term death used by the Convention can be applied only to physical persons, it is our opinion that another term more in keeping with its application to business enterprises and judicial entities ought to have been used.

The Convention tells us that in case of death of the debtor, a liability action, within the limits set forth in the Convention, will lie against those persons legally representing his estate. This is an attempt to guarantee the rights of the users, within the period in which they may validly be exercised, even though the obliged person has ceased to exist.

This concept is clarified by what Manresa y Navarro[1] says about personal actions. A personal action, he states, is that which is exercised by the plaintiff so as to command the fulfillment of a

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1. José María Manresa y Navarro: Comentarios a la Ley de Enjuiciamento Civil, Volume I, page 294, Madrid, 1943.

personal obligation, or to claim from another person that he give, do or desist from doing all that that other person is obliged to give, do or desist from. It would be difficult to specify all the personal actions, as they are as many as the covenants and deeds whereby a person can be obliged; but it will be easy to distinguish them bearing in mind that wherever there exists a person obliged to give, do or desist from doing anything, in such a way that only that person or his heirs can be claimed against, then that is a personal action. That is why these actions can only be directed against a certain person, who is the one especially obliged to comply with what is demanded, in contrast to real actions which are directed against anyone who has the object in his power. Personal actions are derived from contracts, quasi-contracts, crimes and quasi-crimes: that is to say, all those acts by which a man is obliged to give, do or desist from doing something.

Accordingly, inasmuch as the action that can be brought about as a consequence of the contract of aerial transportation is a personal action, the obliged person, the debtor, as expressed in the Convention, is the carrier, and in the case where he has ceased to be, or died, his heirs. Since it is not a real action, it cannot be directed against specifically defined things.

These principles and the definition supplied by the Convention in the precept which we are discussing are in accord with the general purport of the Spanish legislation. With regard to physical persons, Article 659 of the Civil Code makes it clear that the

inheritance includes all the property, rights and obligations of a person which are not extinguished by his death. Article 661 of the same text adds that the heirs succeed to all the rights and obligations of the deceased by the sole fact of his death.

If the carrier were a physical person, when he died his obligations would be transmitted to his heirs against whom the appropriate actions could be exercised within the period of validity. A special situation would be where there were not enough assets in the inheritance, owing to the debts being greater than the assets or to any other circumstances, so that the heirs would not accept it.

When we are dealing with judicial or commercial entities, as is generally the case since the large airlines are constituted with that character, we must look to the dissolution, liquidation and extinction of the company involved. We are then dealing with three distinct phases in any of which the injured person may make his right valid.

When a company is placed in dissolution, says Uría,[2] there begins the resolution of all the legal relationships to which it is subject and of the ties of association which bound its shareholders, with the disappearance of the corporate entity itself, although its activity is transformed from a profit-making to a merely

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2. Joaquín Garrigues and Rodrigo Uría: Comentarios a la Ley de Sociedades Anónimas, Volume II, page 696, Madrid, 1953.

liquidating one. The dissolved company subsists as a given company endowed with a legal personality and retains its domicile, style, assets, accounting, mercantile status, etc., so long as the liquidation period lasts and until its extinction is formalized. Dissolution, therefore, in the sense of our Law, which coincides with the predominant doctrinal view, cannot in any way be confused with the real extinction of the company. It is no more than a judicial cause of such extinction.

During the period of liquidation, all the obligations and responsibilities of the entity are to be discharged. The author cited is of the view that under the rule of Spanish law the traditional doctrine, which recognizes the right of creditors not satisfied in the liquidation to request annulment of the operations of division of the corporate assets, should continue to be upheld, even though the company may formally have been extinguished by the cancellation of its entries in the Register. This same solution will have to be reached in the event that the company is formally liquidated and extinguished while some question in litigation with third parties is pending. We will then not be confronted with a definite or concrete claim but an uncertain claim dependent upon the result of the suit. But in any case if it is granted that the personality of the formally extinguished company will have definitively ceased to be, any rights of litigating creditors who, in the most favorable circumstances, would only have the liability of the liquidators to work with, would be left practically undefended. A creditor who

subsequent to the cancellation of the Register entries of the debtor company obtains recognition of his claim through a judgment will, like the other creditors not satisfied in the liquidation, be able to request the annulment of the cancelling entry, a declaration of the continued existence of the company, the annulment of the operations of division and the reopening of the liquidation. To avoid any difficulties stemming from the reopening of the liquidation, the company may secure the results of the litigation before the liquidation is closed. Only in this case will the liquidation have to be deemed properly performed and the company definitively extinguished with the fulfillment of the formal requirements, without the creditor, whose claim has been covered by the security received, being able to demand the reopening of the liquidation period.

It seems evident that the liquidation and extinction of an airline cannot be held up or made to remain pending until the discharge of possible liabilities derived from the contract of transportation, which at times may be subject to judicial resolutions that take a considerable time. Therefore, according to the circumstances and pursuant to the legislation of the country in question, it will be advisable to adopt the necessary anticipatory measures so that, without detriment to the payment of pending liabilities, once the final figures are known, the liquidation and extinction of the entity may follow their timely course.

The guarantee that the Convention provides so that the liability may be discharged, even after the debtor has ceased to exist,

is subject, as would be expected, to the limits of the Convention. This means that one can proceed against the legal representatives in the same way as one might have against the deceased but not more so, and that such representatives will be protected by the same causes of exoneration and limitation of liability as those which the deceased debtor would have been able to adduce on his own behalf. In the same manner, the legal representatives may assert the inoperativeness of the right of the claimant if, in cases of transportation of baggage and goods, the latter failed to give the notice set forth in Article 26 of the Convention or if the action is brought after the two years prescribed by Article 29. The computation of this period of time will not be affected by the change in the person of the debtor.

Until now we have been referring to the possibility that the debtor is the carrier, which is generally the case. Nonetheless, this rule which we are discussing is also applicable to those cases where the debtor is the passenger, the consignee or the consignor of the goods; these cases may arise in practice, although less frequently. In this regard we must recall that Article 10 of the Convention establishes that the consignor is responsible for the accuracy of the statements and declarations concerning the goods which he inserts in the waybill and that he shall bear liability for all damage suffered by the carrier or any other person owing to irregular, inaccurate or incomplete statements and declarations made by him. Now, this liability will not be extinguished by the death of

the consignor, and the carrier, if appropriate, will be able to exercise his action against the legal representatives of the estate.

Exhibit O Annexed to Reply Affidavit of Stanley J. Levy

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

RUTH ANN REED, as Administratrix of the Estate of DAN WILLIAM REED, deceased, and as parent, natural guardian and best friend of CYNTHIA ANN REED, DEBORA LYNN REED and JULIE MARIE REED, all infants, and

Eight Other Wrongful Death Claims,

Plaintiffs,

-against-

FORWOOD CLOUD WISER, JR., and RICHARD E. NEUMAN,

Defendants.

75 Civ. 4015 (MEF)

AFFIDAVIT

STATE OF NEW YORK)
ss.:
COUNTY OF NEW YORK)

RALPH J. GLADSTONE, being duly sworn deposes and says:

1. The undersigned has a Master's Degree in French Literature from Columbia University (1954), is conversant with the English, French and Spanish languages, has worked as a translator for approximately twenty years and is connected as such with Continental Translation Service, Inc., 369 Lexington Avenue, New York, New York 10017.

2. The attached hereto are true and accurate translations of the following documents:

a. E. MAPELLI LOPEZ, EL CONTRATO DE TRANSPORTE AEREO INTERNACIONAL: COMENTARIOS AL CONVENIO DE VARSOVIA 246-50 (1968); and

b. Resolution No. 20 of the Comite International Technique d'Experts Juridiques Aeriens (hereinafter C.I.T.E.J.A.) adopted in May, 1928 and a draft of a proposed convention on the liability of a carrier engaged in international transportation by air and air waybills contained in Comite International Technique d'Experts Juridiques Aeriens, Compte Rendu de la Troisieme Session 119-28 (May, 1928).

ARTHUR A. LEITH
Notary Public, State of New York
No. 31-7005125
Qualified in Bronx County
Commission Expires March 30, 1977

Sworn to before me this
5 day of February, 1976.

Arthur A. Leith
Notary Public

Ralph J. Gladstone
RALPH J. GLADSTONE

EXHIBIT P--STRATTON V. TRANS-CANADA AIRLINES (OPINIONS)
ANNEXED TO REPLY AFFIDAVIT OF STANLEY J. LEVY

STRATTON v. TRANS CANADA AIR LINES et al.

British Columbia Supreme Court, Manson, J. February 9, 1961.

Aviation — Carriers II B — Liability of airline for death of passenger in plane crash — Whether Warsaw Convention applies to limit liability — Passenger purchasing ticket from Seattle to Victoria— Subsequently re-routed to Vancouver and purchasing ticket from defendant airline in Vancouver for Calgary — Plane crashing en route to Calgary — Whether Vancouver-Calgary flight deemed part of an "international carriage" within provisions of Convention.

The provisions of the Warsaw Convention, applicable to Canada by virtue of the *Carriage by Air Act*, R.S.C. 1952, c. 45, limits the liability of aircraft carriers to passengers on "international" flights, which are defined to include all stages of a flight from one country into another by successive carriers, even a purely domestic stage within the same country, provided that they are regarded by the parties to the contract as a single operation. In the instant case deceased passenger purchased, in Los Angeles, a ticket for a flight from Seattle, Wash. to Victoria, B.C. and thence, *via* defendant T.C.A., to Vancouver. On arrival in Seattle the passenger decided to go directly to Vancouver and from there to Calgary. Defendant's agents in Seattle accommodated the passenger by re-routing him directly to Vancouver *via* another carrier but made no contract with him and advised him to buy his ticket for Calgary on arrival in Vancouver in order to save a U.S. tax. On arrival in Vancouver the deceased purchased a ticket from defendant for Calgary and was killed en route to the latter city when the plane crashed. In an action by his widow and executrix for damages, *held*, that the Convention and its limitations on liability did not apply and plaintiff was entitled to succeed on proof of negligence. The trip from Vancouver to Calgary was not in the contemplation of the passenger when he purchased his ticket at Los Angeles and therefore could not be regarded as part of the international flight thereunder within the proviso of the Convention. The contract entered into with defendant at Vancouver was wholly independent of the original contract for international carriage and was of a purely domestic nature.

PRELIMINARY ISSUE on point of law to determine whether Warsaw Convention applies to limit liability of air carrier with respect to death of passenger arising out of plane crash.

Hugo Ray, Q.C., and *F. Low-Beer*, for plaintiff; *D. McK. Brown*, Q.C., and *R. E. Ostlund*, for defendants.

MANSON, J.:—This action arises out of the death of the husband of the plaintiff when a plane of the defendant Trans Canada Air Lines (hereinafter referred to as "T.C.A.") Flight 810 Vancouver to Calgary, crashed on Mt. Slesse in this Province on December 9, 1956, and all on board were killed including the two pilots whose executors are joined as defendants. The case has been argued on points of law, and points of fact subsidiary to the points of law, the question

of liability for negligence to be determined, if necessary, after questions of fact and law have been decided. A letter of September 7, 1960 from the solicitors for the defendants to the solicitors for the plaintiff sets forth the agreements (*inter alia*) as between the parties as to the points to be presently determined.

The defendants plead (*inter alia*) the *Carriage by Air Act*, R.S.C. 1952, c. 45 which ratified on behalf of Canada what is commonly spoken of as the Warsaw Convention. By Chapter I of the First Schedule to the Convention "international carriage" is defined in Article 1. The subsections of Article 1 are quoted hereunder:

> (1) This Convention applies to all international carriage of persons, luggage or goods performed by aircraft for reward. It applies equally to gratuitous carriage by aircraft performed by an air transport undertaking.
>
> (2) For the purposes of this Convention the expression "international carriage" means any carriage in which, according to the contract made by the parties, the place of departure and the place of destination, whether or not there be a break in the carriage or a transhipment, are situated either within the territories of two High Contracting Parties, or within the territory of a single High Contracting Party, if there is an agreed stopping place within a territory subject to the sovereignty, suzerainty, mandate or authority of another Power, even though that Power is not a party to this Convention. A carriage without such an agreed stopping place between territories subject to the sovereignty, suzerainty, mandate or authority of the same High Contracting Party is not deemed to be international for the purposes of this Convention.
>
> (3) A carriage to be performed by several successive air carriers is deemed, for the purposes of this Convention, to be one undivided carriage, if it has been regarded by the parties as a single operation, whether it had been agreed upon under the form of a single contract or of a series of contracts, and it does not lose its international character merely because one contract or a series of contracts is to be performed entirely within a territory subject to the sovereignty, suzerainty, mandate or authority of the same High Contracting Party.

Counsel for the defendants submit that the statute and the Convention should be liberally construed. The statute limits the liability of the carrier and deprives the passenger in part of the damages to which he would be otherwise entitled. By analogy the statute is not dissimilar to a taxation statute and is to be strictly construed rather than liberally. There is however no occasion to depart from the plain meaning of the words used in the statute.

Counsel for the plaintiff at the close of the hearing asked that the following findings of fact be made:

> 1. THAT Russell S. Stratton was killed on December 9, 1956 while a passenger on an aeroplane owned and operated by the Defendant

Trans Canada Air Lines and that Alan Jack Clarke and John Charles Terrance Boon were the pilots thereof acting in the course and scope of their employment with Trans Canada Air Lines and that the said flight was known as "Flight 810" and was a flight from Vancouver to Calgary.

2. THAT the contract for the said flight was entered into between Trans Canada Air Lines and Russell S. Stratton at the Vancouver Airport on December 9, 1956 when the said Stratton purchased his ticket [EXHIBIT 6.]

3. THAT at the time of the purchase of the said ticket Stratton had no subsisting contractual relations with Trans Canada Air Lines which had not already been either performed by Trans Canada Air Lines or assigned over by Trans Canada Air Lines to a third party.

4. THAT the ticket or tickets bought by Stratton in Los Angeles on October 22, 1956 [EXHIBIT 7] did not include any contract for a flight from Vancouver to Calgary. No other contract was made by Stratton in Los Angeles for a flight from Vancouver to Calgary.

5. THAT no evidence was adduced as to the regard of United Air Lines or its servants or agents with respect to any matter material to this action and in particular with respect to the regard of United Air Lines or its servants or agents to the said flight from Vancouver to Calgary and return or the contract therefor.

6. THAT none of the witnesses called by the Defendants remembers the said Stratton at all and in particular that the witnesses Mary Ellen Smith, Ruby Alma Kelly, Helen Tyrecki, H. L. Hatch and M. L. Rachuk do not remember the said Stratton.

7. THAT H. L. Hatch was not acting as an agent or servant of United Air Lines at any material time to this action.

8. THAT at no material time did the said Stratton have any or reasonable notice of Walker's Tariff [EXHIBIT 10] and in particular that the said Stratton had no reasonable notice of the said tariff when he purchased the said ticket at the Vancouver Airport on December 9, 1956, and that the Defendant Trans Canada Air Lines did not take reasonable steps to bring the said Walker's Tariff to his attention.

9. THAT no evidence was adduced that a copy of the said tariff was in fact available for inspection at the Trans Canada Air Lines counter at the Vancouver Airport on December 9, 1956.

10. THAT the Plaintiff was the lawful wife of the said Russell S. Stratton at the time of his death and that Stephen Marshall Stratton, born the 30th day of December, 1930, Russell S. Stratton, Jr., born the 18th day of January 1936 and Margarette Lockwood Long (nee Stratton), born the 20th day of April 1942 were the children of the Plaintiff and the said Russell S. Stratton were alive at the time of Stratton's death.

11. THAT the Plaintiff is the Executrix of the Estate of the said Russell S. Stratton and that Letters Testamentary for the Estate of Russell S. Stratton, deceased, was granted to the Plaintiff by the Court of County Judge, Pinellas County, State of Florida, one of the United States of America, on the 21st day of March, 1957 and a Grant of Letters Probate for the Estate of Russell S. Stratton, deceased, was granted by the Supreme Court of British Columbia in Probate to the Plaintiff on the 16th day of March 1959, limited to the Estate situate within the Province of British Columbia.

Upon the evidence there can be no doubt that the paragraphs above set forth correctly state the facts. As to para. 4 I would add that there can be no doubt that the flight from Vancouver to Calgary was not regarded by the parties when the deceased bought his ticket at Los Angeles on October 22, 1956, as a single operation of an undivided carriage. The flight did not fall within s-s. (3) of Article 1.

As to para. 8, Walker's Tariff (so called) is a document of over twenty pages in extremely small type, several pages printed on both sides, one page scored in pencil and taken all in all an almost illegible document and one calculated to confuse rather than to enlighten. It would have taken an educated passenger at least an hour to read it and another several hours to understand it. The deceased had no occasion to inspect the same. He had no reason for suspecting that he had been charged more than the established tariff for his ticket. There was no evidence that he ever saw Walker's Tariff or that he had notice that such a document existed. Some sheets were issued on one date and others on sundry other dates and the effective dates of the several sheets varied widely. There was no evidence as to where a copy amended to October 22, 1956 was to be found by a prospective passenger.

The deceased bought at Los Angeles a ticket for a flight on December 9th from Seattle to Victoria and *via* T.C.A. on to Vancouver, and *via* the United Air Lines back to Seattle. On arrival at Seattle he abandoned the trip to Victoria and decided to come directly from Seattle to Vancouver. He explained to the agent at Seattle that he intended to leave on the afternoon of December 9th for Calgary. The T.C.A. agent endorsed over the ticket to Vancouver *via* Victoria to United Air Lines and made alternate reservations for him from Vancouver to Calgary. They showed him every courtesy in the matter of re-routing him *via* United Air Lines to Vancouver but made no contract with him, sold him no ticket and advised him to buy his ticket for Calgary on arrival at Vancouver and thereby save a United States tax. The deceased acted upon their advice and actually bought his ticket in Vancouver and availed himself of the reservation on Flight 810. There was another T.C.A. flight for Calgary that afternoon or evening which he could have taken. That fact is not of importance. The important facts are that the trip to Calgary was not in contemplation when he bought his tickets at Los Angeles and that the contract entered into at Vancouver was wholly independent of the original contract for international carriage. The courtesy service at Seattle of re-routing the

passenger to Vancouver, making reservations for him to Calgary and giving him advice does not warrant the conclusion that a contract was entered into with the T.C.A. On arrival at Vancouver he was quite free to change his mind, abandon his contemplated trip to Calgary and fly or take the train back to Seattle. The contract entered into at Vancouver was not one of international carriage.

It was submitted that the pilots were covered by the Act. The Act extends to carriers only. There is nothing in the Act that even remotely suggests that the word "carrier" is to be interpreted as including employees of carriers. *Vide Krawill Machinery Corp. v. Robt. C. Herd & Co.*, [1959] 1 Lloyd's Rep. 305; *Pierre v. Eastern Air Lines Inc.*, [1957] U.S. & Can. Av. R. 431.

The plaintiff had the requisite status to bring this action. *Vide Meyappa Chetty v. Supramanian Chetty*, [1916] A.C. 603 at p. 608. *Young v. Industrial Chemicals Co.*, [1939] 4 D.L.R. 392, 54 B.C.R. 309, is not in conflict. It turned on a different point.

The plaintiff pleads and relies upon the *Administration Act*, R.S.B.C. 1948, c. 6, and the *Families' Compensation Act*, R.S.B.C. 1948, c. 116. She is entitled to do so.

The defendants contend that the plaintiff should have pleaded the *Carriage by Air Act*. To have done so would have necessitated the plaintiff relying upon contradictory allegations. That would have been error and improper pleading.

A multitude of cases were cited by counsel, but this action depends upon the findings of fact. Upon the findings made as above the plaintiff is entitled to succeed, subject only to proof of negligence and the assessment of damages.

CASSON v. WESTMORLAND INVESTMENTS LTD. et al.

British Columbia Court of Appeal, DesBrisay, C.J.B.C., Norris and Tysoe, JJ.A. March 24, 1961.

Mechanics' Liens III — Priority of mortgage over mechanics' lien — Meaning of "mortgage money" under Mechanics' Lien Act (B.C.), s. 7 — Whether covers money given as loan and subsequently secured by mortgage.

"Mortgage money" as used in s. 7(1) of the *Mechanics' Lien Act*, 1956 (B.C.), c. 27 means money owing under a mortgage, however the debt was originally incurred. Once secured by a mortgage, the latter ranks under s. 7 in priority to a mechanics' lien to the extent to which

of these cases to the carrying of the razor or knife concealed on the person being unlawful. Instructions to the jury were only in relation to the use being made of the weapons immediately prior to the time of the killing.

I am of the opinion that in the circumstances of this case the jury should have been instructed that if they came to the conclusion that the appellant was justified in self-defence in firing the rifle into the sidewalk and pointing it at the deceased to keep the deceased from attacking him and that the firing of the shot that killed the deceased was accidental, or if they came to the conclusion that the firing into the sidewalk was justified and that both the pointing of the rifle at the deceased and firing it was accidental, that is, not intentional and not negligent to the degree referred to by Humphreys, J., in the *Larkin* case, then they might acquit the accused.

For these reasons I would allow the appeal, quash the conviction and direct a new trial on an indictment for manslaughter. As the majority of the Court would dismiss the appeal as to conviction I should add that I am in agreement with the reasons and conclusions proposed by my brother, the Acting Chief Justice, in regard to the appeal as to sentence.

Appeal from conviction dismissed; appeal from sentence allowed.

STRATTON v. TRANS-CANADA AIR LINES et al.

British Columbia Court of Appeal, O'Halloran, Davey, Sheppard, Norris and Tysoe, JJ.A. February 21, 1962.

Aviation — Carriers II B — Airplane crash — Whether international flight — Whether liability limited — Liability of pilot and co-pilot — Carriage by Air Act (Can.) — Families' Compensation Act (B.C.), s. 3.

One S purchased a ticket for international carriage by air within the meaning of the Warsaw Convention as adopted by the *Carriage by Air Act*, R.S.C. 1952, c. 45. His flight, in 26 stages, was to take him from Los Angeles to various points in the United States and Canada and back to Los Angeles. The last part of his itinerary took him from Seattle to Vancouver via Victoria and then back to Seattle and Los Angeles. The trip from Seattle to Vancouver was booked for T.C.A. and the Vancouver to Seattle trip with United Air Lines. While in Seattle S determined to make a trip to Calgary and arranged with an agent of T.C.A. for a booking frm Seattle to Calgary via Vancouver and return. This booking involved a routing from Seattle to Vancouver via United Air Lines and from Vancouver to Calgary and back to Vancouver via T.C.A. The agent reserved seats on these routes (leaving

only the Vancouver-Seattle trip via United Air Lines open) booked S as a through passenger, waived the necessity of reconfirming the Vancouver-Calgary reservation and endorsed to United Air Lines on behalf of T.C.A. its ticket for the Seattle-Victoria-Vancouver flight. This transfer T.C.A. was bound to make and United Air Lines to accept on request of the passenger. S was advised by the agent to buy the Vancouver-Calgary return ticket in Vancouver. S was killed in a crash of the T.C.A. plane on the flight from Vancouver to Calgary.

In an action by S's widow against T.C.A. and the personal representatives of the pilot and co-pilot, *held*, the flight from Vancouver to Seattle was not part of the international flight and the widow was entitled to recover from T.C.A. without any limitation on liability under the terms of the Warsaw Convention and the *Carriage by Air Act*. Although T.C.A. would become a party to the original contract by undertaking to perform part of it, the Vancouver to Calgary trip was not part of it. Nor was it a "re-routing" under the original contract, since Calgary was not a destination originally planned. The only re-routing which took place was the change in carrier and route for the Seattle-Vancouver trip. The arrangement made in Seattle did not create a binding contract between S and T.C.A. for the added trip so it was impossible to say that the trip from Seattle to Vancouver to Calgary was regarded by United Air Lines and T.C.A. as a single operation and hence an international flight. In any event United Air Lines knew nothing of the Vancouver-Calgary flight.

As to the pilot and co-pilot, since there was no evidence they had survived S, s. 3 of the *Families' Compensation Act*, R.S.B.C. 1948, c. 116 [now R.S.B.C. 1960, c. 138] had no application. The amendment to that Act, 1958 (B.C.), c. 16, s. 6(1) had no retrospective effect. The action against them should be dismissed.

[*Cairney v. MacQueen*, 3 D.L.R. (2d) 481, 74 C.R.T.C. 31, [1956] S.C.R. 555, apld; *Rotterdamsche Bank N.V. et al. v. B.O.A.C.*, [1953] 1 All E.R. 675; *Grein v. Imperial Airways Ltd.*, [1936] 2 All E.R. 1258, refd to]

APPEAL from a judgment of Manson, J. (1961), 27 D.L.R. (2d) 670, on a preliminary issue of law, holding that the Warsaw Convention had no application to limit liability respecting the death of a passenger in a certain plane crash. Affirmed.

D. McK. Brown, Q.C., and *R. E. Ostlund*, for appellant.
Hugo Ray, Q.C., and *W. A. Esson*, for respondents.

O'HALLORAN, J.A.:—I would dismiss the appeal of Trans-Canada Air Lines, but I agree also that the appeal of the personal representatives of the pilots should be allowed.

DAVEY, J.A.:—The respondent's husband died in the crash of one of the appellant's planes, Flight No. 810, against Mt. Slesse, British Columbia, while on a flight from Vancouver, B.C., to Calgary, Alberta. The respondent brought this action to recover damages for his death from Trans-Canada Air Lines and the personal representatives of the pilot and co-pilot, who lost their lives in the crash.

One of the defences raised is that the flight was not domestic, but international, and according the appellants' liability is limited under Article 22(1) of the Warsaw Convention; another defence is that the respondent's cause of action against the pilots under the *Families' Compensation Act*, R.S.B.C. 1948, c. 116 [now R.S.B.C. 1960, c. 138] died with them: *Cairney v. MacQueen*, 3 D.L.R. (2d) 481, 71 C.R.T.C. 31, [1956] S.C.R. 555. These defences, and several others that need not be mentioned, were ordered to be tried upon an issue before trial. Manson, J., [(1961) 27 D.L.R. (2d) 670], who tried the issue, held that the flight was domestic, but did not deal with the cause of action against the pilots. From that judgment the Air Line and the personal representatives of the pilots appeal.

The provisions of the Warsaw Convention were adopted by Parliament under the *Carriage by Air Act*, R.S.C. 1952, c. 45, and constitute part of our domestic law. The following are the important provisions bearing on this appeal.

ARTICLE 1.

(1) This Convention applies to all international carriage of persons, luggage or goods performed by aircraft for reward. It applied equally to gratuitous carriage by aircraft performed by an air transport undertaking.

(2) For the purposes of this Convention the expression "international carriage" means any carriage in which, according to the contract made by the parties, the place of departure and the place of destination, whether or not there be a break in the carriage or a transhipment, are situated either within the territories of two High Contracting Parties, or within the territory of a single High Contracting Party, if there is an agreed stopping place within a territory subject to the sovereignty, suzerainty, mandate or authority of another Power, even though that Power is not a party to this Convention. A carriage without such an agreed stopping place between territories subject to the sovereignty, suzerainty, mandate or authority of the same High Contracting Party is not deemed to be international for the purposes of this Convention.

(3) A carriage to be performed by several successive air carriers is deemed, for the purposes of this Convention, to be one undivided carriage, if it has been regarded by the parties as a single operation, whether it had been agreed upon under the form of a single contract or of a series of contracts, and it does not lose its international character merely because one contract or a series of contracts is to be performed entirely within a territory subject to the sovereignty, suzerainty, mandate or authority of the same High Contracting Party.

ARTICLE 3.

(1) For the carriage of passengers the carrier must deliver a passenger ticket which shall contain the following particulars:—

(*a*) the place and date of issue;

(*b*) the place of departure and of destination;

(c) the agreed stopping places, provided that the carrier may reserve the right to alter the stopping places in case of necessity, and that if he exercises that right, the alteration shall not have the effect of depriving the carriage of its international character;

(d) the name and address of the carrier or carriers;

(e) a statement that the carriage is subject to the rules relating to liability established by this Convention.

(2) The absence, irregularity or loss of the passenger ticket does not affect the existence or the validity of the contract of carriage, which shall nonetheless be subject to the rules of this Convention. Nevertheless, if the carrier accepts a passenger without a passenger ticket having been delivered he shall not be entitled to avail himself of those provisions of this Convention which exclude or limit his liability.

Stratton was an officer of the Merganthaler Linotype Company. His duties took him in October, 1956, on an extended tour of major cities in United States and Canada, including Montreal, Toronto, and Vancouver, leaving from and returning to Los Angeles. He travelled by air over various lines on tickets issued by American Air Lines at Los Angeles under the Universal Air Travel Plan. There were approximately twenty-six legs in the round trip. The tickets consisted of seven booklets of flight coupons, with four flight coupons to the booklet. The booklets were stapled together into one book, and the conditions were printed on the inside cover of the main book and on the inside cover of each booklet. American Air Lines issued the flight coupons over other lines as agent for the other carriers.

Stratton's itinerary in the Northwest States and Canada covered by his flight coupons took him to Seattle, thence to Vancouver, B.C., via Trans-Canada Air Lines by way of Victoria, B.C., thence back to Seattle via United Air Lines, and from Seattle back to Los Angeles. It did not include a trip from Vancouver to Calgary.

Stratton learned at Spokane that one of the persons he expected to see had gone to Calgary, so in Seattle he saw Hatch, the agent for Trans-Canada Air Lines, and asked Hatch to book him through from Seattle to Calgary, via Vancouver, and return over that route. Hatch did that by several successive steps; he phoned United Air Lines and secured a reservation of space for Stratton on their flight No. 393, from Seattle to Vancouver via Bellingham; he re-routed Stratton to Vancouver via United Air Lines by endorsing to United Air Lines on behalf of Trans-Canada Air Lines its ticket for the Seattle-Victoria-Vancouver flight, a transfer which Trans-Canada and United were bound to make and to accept upon request by the passenger; Hatch reserved space on the waiting list for Trans-Canada's flight No. 810

from Vancouver to Calgary, with which United's flight No. 393 connected, and he reserved space for Stratton on a later flight No. 8 out of Vancouver, in case he could not get a seat on Flight No. 810; Hatch booked Stratton on the Trans-Canada records as a through passenger to Calgary and waived re-confirmation of the reservations that otherwise would have been required. Hatch also reserved space on the returning Trans-Canada Calgary-Vancouver flight, but left the Vancouver-Seattle flight open at Stratton's request. For several reasons, which are immaterial here, Hatch advised Stratton to buy his Trans-Canada ticket for the Vancouver-Calgary and return flight in Vancouver.

As a result of those arrangements, Stratton presented his endorsed Trans-Canada Seattle-Vancouver ticket to United Air Lines at Seattle, secured from it a boarding pass for flight No. 393, bought his ticket for the Vancouver-Calgary flight on his arrival in Vancouver, boarded flight No. 810, and lost his life with all on board on Mt. Slesse.

The appellants contend on three grounds that the Vancouver-Calgary flight was part of an international flight within the terms of the Warsaw Convention; it being common ground that the flight Los Angeles to Los Angeles was an international flight under the Los Angeles contract:

(1) That it was part of the original circle trip, Los Angeles to Los Angeles, because it was a rerouting of part of that trip that Stratoon was entitled to demand under his original contract and the provisions of Walker's Tariff, the governing tariff in United States and Canada.

(2) That in any event the arrangement between Stratton and Hatch in Seattle under which the Trans-Canada ticket was endorsed to United Air Lines, Stratton was booked as a through passenger to Calgary, and re-confirmation of the Trans-Canada reservations was waived, constituted a firm contract with Stratton, made in Seattle, by which Trans-Canada and Stratton were respectively bound to supply and take the reserved space; consequently the Seattle-Calgary trip was regarded as a single operation within the Convention and therefore international.

(3) That even if no firm contract was made in Seattle for the Trans-Canada flight, there was an arrangement made in advance in Seattle for the trip to Vancouver and thence to Calgary, and that under the provisions of Walker's Tariff the parties are taken to have regarded the trip as a single operation for the purposes of the Convention.

There is no authority precisely in point, and many in-

teresting questions arise on the broad application of Article 1 of the Convention; however I propose to confine my remarks to the narrow grounds upon which I think this appeal turns, and to leave the wider questions until they have to be decided.

The short answer to appellants' first submission is that the Vancouver-Calgary-Vancouver flight was not a rerouting within the meaning of Walker's Tariff, but was an added flight, and so did not become part of the international carriage contracted for in Los Angeles.

Walker's Tariff defines "rerouting" and "routing":

> I. Reroute. The term "reroute" (as applied to a passenger) means to issue a new ticket covering transportation to the same destination as, but via a different routing than, that designated on the ticket, or portion thereof, then held by the passenger or to honor the ticket, or portion thereof, then held by the passenger for transportation to the same destination as, but via a different routing than, that designated thereon.
>
> K. Routing. The term "routing" means the carrier(s) and/or cities and/or class of service via which transportation is provided between two points.

By these definitions the carriage rerouted is the carriage to the destination specified in the ticket or portion thereof surrendered, and the rerouting may be affected by the tickets being honoured by a different carrier or by the same carrier in a different way. The only flight coupon endorsed over to United was Coupon C237274, which, *inter alia*, covered the Seattle-Vancouver flight; that was the only flight affected by the endorsement, because the only other flight remaining under that coupon was from Vancouver to Seattle by United. Therefore, it follows from the definition that the carriage rerouted was from Seattle to the nominated destination of Vancouver, via Trans-Canada by way of Victoria. It seems from this to be quite clear that the Vancouver-Calgary trip was not part of the rerouting, and so did not become part of the international carriage contracted for at Los Angeles.

The next question is the appellant's submission that Stratton's arrangement with Hatch in Seattle constituted a contract with Trans-Canada, by which that line agreed to sell and Stratton agreed to buy a ticket at Vancouver for the space reserved for the Calgary flight, and that Stratton, Trans-Canada, and United regarded to connecting carriage from Seattle to Vancouver to Calgary as a single operation.

In support of the submission that there was a contract made in Seattle for the Vancouver-Calgary flight, counsel argues that any member of the public who reserves a room at a hotel or space on a carrier enters into a contract by

which the service agrees to supply the space and the applicant agrees to take it. He submits that the waiver by Trans-Canada of re-confirmation of the seat on flights No. 810 and No. 8 shows an intention of contracting. He contends that a hotel or carrier that fails to furnish the room or space covered by the reservation, and the customer who fails to take it, are liable at law. But there can be no contract unless the parties intend the arrangement to be one. Family arrangements that are not intended to create legal rights and impose legal obligations are a familiar application of that principle. In my opinion, people who obtain reservations and the services that grant them would be surprised to learn that by that fact alone they had acquired legal rights and assumed legal obligations. I cannot see that the waiver of the Trans-Canada's right to re-confirmation changes the legal result. The provision of Walker's Tariff that reservations are only tentative confirms my opinion that the making of these reservations in Seattle did not constitute a contract between Stratton and Trans-Canada.

Another formidable difficulty confronting appellants in this argument is to show that United knew anything about the Vancouver-Calgary trip, so as to enable it to be said that United regarded the carriage from Seattle to Vancouver to Calgary as a single operation. That difficulty will now be discussed under the third submission, which turns upon the following provision of Walker's Tariff defining the circumstances under which the parties to a series of flights are to be taken to regard them as a single operation for the purposes of an international flight under Article I, Clause 3 of the Convention. Clause I(d)(2) of the Tariff reads:

> 2. *Single operation.* Transportation to be performed by several successive carriers by air, arrangements for which are made in advance, is regarded as a "single operation", and shall be deemed to be "one undivided transportation" whether one or more tickets or other documents are issued to cover such transportation, and whether or not all such tickets or documents are issued prior to the commencement of such transportation, but this provision shall not be deemed to contain an inclusive definition of transportation which is regarded by the parties as "a single operation".

"Transportation" is used in the American translation of the Convention instead of "carriage" used in the Canadian.

I assume, without deciding, that this provision of Walker's Tariff is legally sufficient to make carriages falling within the definition a single operation, and thus bring them into the category of international carriage under the Convention, even though in fact the parties may not have applied their

minds at all to the question of single operation. In my opinion that provision only applies where all the carriers involved have, or are taken to have, knowledge of the arrangement.

The transaction between Stratton and Hatch in Seattle was an arrangement within this definition for transportation from Seattle to Calgary by successive carriers; but I am unable to find the other essential element of the definition, namely, that United knew of the arrangement of the impending trip from Seattle to Vancouver to Calgary so that it could be said to have regarded its services under the endorsed Trans-Canada ticket as part of that single operation.

Appellants seek to overcome this difficulty in several ways. First, it is said that Hatch endorsed the Trans-Canada ticket as agent for United. Had he issued a United ticket under the Universal Air Travel Plan for the Seattle-Vancouver trip, as he might have done if it had been required, he would have done so as agent for United. But that was not done. It is clear that in endorsing the Trans-Canada ticket he was acting as Trans-Canada's agent in dealing with Trans-Canada's business; it was Trans-Canada's endorsement that was required from and given by Hatch.

Then it is said that Hatch acted as agent for United in making the reservation over flight No. 393. That submission is based upon the contention that under the Universal Air Travel Plan all participating carriers act as agents for all other participating carriers to enable the subscribers to make all arrangements for flights over several lines at one office. (See Bett's evidence.) The governing documents under that plan were not introduced in evidence, and it is difficult to say from Bett's evidence how far that agency extends. I do not think that appellant's argument is advanced by Section 10 of Walker's Tariff, providing that each participating carrier will be responsible for furnishing transportation only over its own lines, and when it makes an arrangement for transportation by another participating carrier, it will act only as agent for that carrier. That section deals only with the question whether the arranging carrier is acting as principal or as agent for the other carrier. It does not purport to make the arranging carrier agent for the transporting carrier in all the arranging carrier may do on behalf of the passenger outside its own carriage. In this case the learned trial Judge found that Hatch obtained the reservations over United as a matter of courtesy for Stratton, *i.e.*, that he acted as Stratton's agent for that purpose. There is much to be said for that view, since Hatch only applied for

and obtained the reservation from United; it was United that reserved the space. But even if it be held that Hatch was United's agent in acting as the channel of communication between it and Stratton for the reservation of the space on flight No. 393, the scope of that agency was not sufficiently wide to bring home to United in respect of the endorsed Trans-Canada ticket the knowledge that Hatch possessed as agent for Trans-Canada about the intended connecting flight over the latter's line. In view of that it seems impossible, even under the definition of "single operation" in Walker's Tariff, to hold that United regarded the rerouted carriage on its flight No. 393 as part of an undivided transportation from Seattle to Calgary, when it had no knowledge, actual or attributed, about the arrangements for the Vancouver-Calgary leg.

Article 30 of the Convention seems to decisively dispose of this branch of appellants' submission. It reads:

> (1) In the case of carriage to be performed by various successive carriers and falling within the definition set out in the third paragraph of Article 1, each carrier who accepts passengers, luggage or goods is subjected to the rules set out in this Convention, and is deemed to be one of the contracting parties to the contract of carriage in so far as the contract deals with that part of the carriage which is performed under his supervision.

The contract made with American Air Lines at Los Angeles admittedly one of the international carriage, so Article 30 applies to the ticket issued at Los Angeles for the Seattle-Victoria-Vancouver flight over Trans-Canada; it was that ticket that United honoured, and it did so under the contract made at Los Angeles covering the flights specified in it. The ticket for the Seattle-Victoria leg showed on its face that it had been issued by American Air Lines and it specified on its face the conjoined tickets for the whole flight under the Los Angeles contract which did not include the Vancouver-Calgary trip. By the Convention and the provisions of Walker's Tariff United was performing Trans-Canada's obligations under that contract. Accordingly, I am unable to accept the view that United must be taken to have regarded its services under that contract for the Los Angeles to Los Angeles circle flight as part of another arrangement, made by Hatch in Seattle, for an undivided carriage from Seattle to Calgary, when it carried Stratton from Seattle to Vancouver under the Los Angeles contract without knowing anything about the arrangements for the Vancouver-Calgary flight.

In my opinion the learned trial Judge reached the right

conclusion upon this aspect of the case, and I would dismiss Trans-Canada's appeal.

Turning now to the appeal of the personal representatives of the pilots of the ill-fated plane, the learned trial Judge did not expressly deal with their submission that the respondent's action against them ought to be dismissed under the authority of *Cairney v. MacQueen, supra.* I agree for the reasons given by my brother Sheppard, that s. 6(1) of 1958 (B.C.), c. 16, amending the *Families' Compensation Act,* which was relied upon by the respondent to distinguish *Cairney v. MacQueen,* has no retrospective operation, and does not apply to the case at bar. The appeal of the personal representatives of the pilots must be allowed accordingly.

SHEPPARD, J.A.:—This appeal is by the defendants from a portion of the judgment of Manson, J. [27 D.L.R. (2d) 670], of February 9, 1961, holding for the plaintiff on the trial of certain of the issues arising on the pleadings as preliminary to the trial of the action.

The action arises out of the death of the plaintiff's husband, Russell S. Stratton, on December 9, 1956, when an aeroplane of the defendant (Trans-Canada Air Lines) on Flight 810 Vancouver to Calgary, crashed on Mount Slesse, British Columbia, and killed all on board.

That flight taken by Stratton occurred under the following circumstances. On October 22, 1956, at Los Angeles, Stratton purchased from American Airlines Inc. a ticket containing 26 flight coupons for a carriage commencing at Los Angeles, then proceeding by various air carriers to intermediate points including Seattle, thence to Vancouver by T.C.A. and Vancouver to Seattle by United Airlines, with agreed stopovers, and eventually returning to Los Angeles. The ticket did not contain a flight from Vancouver to Calgary and return; at Los Angeles that was not considered. At Spokane, Stratton, then en route, telephoned his wife that a man he intended to see was then in Calgary and that he intended going on to Calgary. The ticket purchased at Los Angeles provided for a flight by T.C.A. from Seattle to Victoria and from Victoria to Vancouver. On December 9, 1956, at Seattle, Stratton had the T.C.A. by their agent, Hatch, endorse to the United Airlines the coupons for the flight from Seattle to Vancouver via Victoria. Hatch also put Stratton on the waiting list of T.C.A. for a seat on Flight 810, the connecting flight Vancouver to Calgary, and as a precaution, also reserved with T.C.A. a seat on Flight 8, Vancouver to Calgary. Hatch did not sell Stratton a ticket to Calgary. At Seattle Stratton presented

the endorsed coupons to the United Airlines, obtained a boarding pass and proceeded to Vancouver. At Vancouver, on December 9, 1956, Stratton purchased from T.C.A. a ticket for Flight 810 leaving that day from Vancouver to Calgary and for his return to Vancouver on Flight 801 on December 11, 1956. On Flight 810 the accident occurred which resulted in Stratton's death.

The plaintiff brought action against the T.C.A. and the executors of the two pilots, and after the close of the pleadings, Maclean, J., by order bearing date January 14, 1960, directed the trial of certain issues as preliminary to the trial of the action. Manson, J., after the trial of those issues held for the plaintiff and the defendants have appealed in respect of the issues raised by paras. 19 and 21 of the defense, namely:

(1) that Stratton was on an international carriage as defined by the *Carriage by Air Act*, and Schedule thereto (the Warsaw Convention), and that the defendants' liability was thereby limited in amount by Article 22(1), (Defence Paragraph 19), and

(2) that the plaintiff's action did not come within the provisions of the *Families' Compensation Act* and amendments thereto and did come under the maxim *actio personalis moritur cum personâ*, (Defence Paragraph 21).

As to the first ground of appeal, the defendants contend that the flight Vancouver to Calgary was an "international carriage" as defined by Article 1, Schedule 1 of the *Carriage by Air Act*. and therefore the defendants' liability was limited. On the other hand, the plaintiff contends that the flight was not an "international carriage" but merely a return flight from Vancouver to Calgary and was wholly governed by the laws of British Columbia, the place where the accident occurred. The question is whether that flight Vancouver to Calgary was an "international carriage", and that turns upon Article 1 which reads: [See the judgment of Davey, J.A., *supra*, at p. 738.]

The contract of carriage determines whether or not the carriage is international. That is indicated by the words in Article 1(2), "according to the contract made by the parties". The contract of carriage may be in form "a single contract" or "a series of contracts" (Article 1(3)), but in whichever form that contract determines whether the carriage "has been regarded by the parties as a single operation" within Article 1(3).

In *Grein v. Imp. Airways Ltd.*, [1936] 2 All E.R. 1258, Greene, L.J., at p. 1280 said:

> The contract (or under para. (3) the series of contracts) is, so to speak, the unit to which attention is to be paid in considering whether the carriage to be performed under it is international or not.

And Talbot, J., at p. 1288 said:

> To be international carriage, the carriage must, according to the contract made between the parties, have a place of departure and a place of destination, either situated within the territories of two of the High Contracting Parties to the convention, or, if they are both within the territory of one High Contracting Party, having an "agreed stopping place," "within a territory subject to the sovereignty, suzerainty, mandate or authority of another power," whether that power is, or is not, a party to the convention.

A carrier not formally a contracting party may become one of the contracting parties by undertaking the performance within Article 30(1), and such carrier will thereby come within the provisions of the Convention: *Rotterdamsche Bank N.V. et al. v. British Overseas Airways Corp.*, [1953] 1 All E.R. 675. Hence in any event, whether or not the carriage is international will be determined from the contract of carriage.

The ticket obtained at Los Angeles was for an "international carriage" within Article 1 in that:

(1) It was a "contract made by the parties" within Article 1(2), namely, by Stratton of the one part and the respective carriers (through their agent Miss Smith) of the other part;

(2) There was "an agreed stopping place within a territory subject to the sovereignty . . . of another Power", namely, Victoria and Vancouver (within Article 1(2);

(3) The ticket was for "one undivided carriage" being "regarded by the parties as a single operation" (Article 1(3)). That appears from the ticket. Los Angeles was the place of departure and the place of destination; the ticket was made up as a single contract based on one entire consideration.

The defendants contend that the carriage Vancouver to Calgary and return became part, by extension or otherwise, of that international carriage obtained at Los Angeles.

At Los Angeles the carriage Vancouver to Calgary was not made part of the original carriage, as the need for taking the flight to Calgary did not arise until afterwards, that is until December 8th when Stratton was at Spokane and as Miss Smith, the agent of the American Airlines who sold the ticket at Los Angeles testified, the flight Vancouver to Calgary

was not then considered. It follows that at Los Angeles there was no contract whereby the carriage Vancouver to Calgary together with the carriages provided for in the ticket were regarded by the parties as a single operation within Article 1.

The defendants contend that the arrangements at Seattle had the effect of creating an international carriage. At Seattle the endorsement of that portion of the ticket by T.C.A. through Hatch to United Air Lines, and the acceptance thereof by United Air Lines, was a rerouting within Section 8(b) of Walker's Tariff to which the original ticket was subject and hence that rerouting was an amendment provided for by the original contracting parties. On the other hand, the carriage Vancouver to Calgary was not a rerouting at Seattle under the original ticket for the reason that Stratton at Seattle held no ticket for that carriage (Vancouver to Calgary) which was capable of being endorsed so as to comply with Section 8(b) of Walker's Tariff.

The defendants contend that at Seattle Stratton of the one part and Hatch for the carriers concerned, of the other part, entered into a binding agreement for the carriage of Stratton from Vaucouver to Calgary and return and this binding agreement had the effect of enlarging the carriage provided for in the original ticket, and of thereby becoming part of the original international carriage or alternatively, had the effect of creating a new international carriage from Seattle *via* Vancouver to Calgary and return. That contention cannot succeed.

At Seattle matters essential to a binding contract were left open for further negotiation, namely, whether the flight should be by Flight 810 or Flight 8, by economy or first-class accommodation, and the amount of the fare. Further, Walker's Tariff, Section 12, provides that a reservation is merely tentative until the ticket is purchased and no ticket Vancouver to Calgary was purchased or issued at Seattle. In the result there was no binding obligation at Seattle for a carriage from Vancouver to Calgary and as there was no contract there could be no "international carriage" within Article 1.

At Vancouver nothing occurred which made the carriage Vancouver to Calgary an international flight within Article 1. There is nothing to indicate that such carriage "has been regarded by the parties as a single operation" with the other carriages under the original ticket as required by Article 1. The original ticket was not amended nor the fare adjusted so as to include in that one contract the carriage Vancouver

to Calgary with the original carriages or for one entire consideration so as to constitute "one undivided carriage" — "regarded by the parties as a single operation" within Article 1(3). On the contrary, the documents issued at Vancouver relating to the flight in question, namely ex. 3, the Universal Air Travel Plan, and ex. 6, the Original Flight Coupon, indicate that such flight was regarded by Stratton and T.C.A., the parties thereto, as a distinct and separate flight on a distinct and separate contract based on its own distinct and separate consideration. Hence the flight in question, Vancouver to Calgary, was not an international flight within Article 1, but is a domestic flight within Canada, and therefore subject to the laws of British Columbia, the place where the accident occurred. As the Warsaw Convention does not apply, it is not necessary to consider whether the pilots would have been entitled to its benefits had it been applicable to the flight in question.

On the second ground, the defendants contend that s. 3 of the *Families' Compensation Act*, R.S.B.C. 1948, c. 116, the section in force at the time of the accident, applies only when the wrongdoer survives the person injured and as there is no evidence that the pilots survived Stratton, therefore the action fails as against the executors of the pilots. That was determined in *Cairney v. MacQueen*, 3 D.L.R. (2d) 481, 74 C.R.T.C. 31, [1956] S.C.R. 555. There the passenger and pilot having died in the crash of an aeroplane, the action was brought under s. 3 of the *Families' Compensation Act* by the personal representatives of a passenger against the personal representatives of the pilot, and the Supreme Court of Canada held that the action failed in that there was no evidence that the pilot had survived the passenger.

The plaintiff contends that this result of *Cairney v. MacQueen* was remedied by s. 6(1) of the *Families' Compensation Act*, 1958 (B.C.), c. 16, which reads:

> 6(1) When any person dies who would have been liable in an action for damages under this Act had he continued to live, then, whether he died before or after or at the same time as the person whose death was caused by wrongful act, neglect, or default, an action may be brought and maintained, or, if pending, may be continued, against the executor or administrator of the deceased person, and the damages and costs recovered in the action shall be payable out of the estate of such deceased in like order of administration as the simple contract debts of the deceased.

The plaintiff contends that this action, commenced on June 10, 1957, was "pending" on March 28, 1958, when s. 6(1) came into force, therefore the section applies to declare that this action "if pending may be continued". That contention

assumed that the words "if pending" refer to the date that s. 6 came into force and would make the section applicable to past deaths providing an action were pending at the time the section came into force: but that is not the meaning. The section is not procedural but substantive: *B.C. Elec. R. Co. v. Gentile*, 18 D.L.R. 264 at pp. 266-7, 18 C.R.C. 217 at pp. 222-3, [1914] A.C. 1034 at p. 1040; where it applies it will confer a right of action which would not otherwise exist: *Cairney v. MacQueen, supra*. Therefore the section confers substantive rights and should be construed as operating prospectively unless a contrary intention is plainly manifested by express terms or clear implication: *Dixie v. Royal Columbian Hospital*, [1941] 2 D.L.R. 138 at p. 139, 56 B.C.R. 74 at p. 78. By such rule of construction the opening words, "When any person dies" should be understood to mean a person dying after the section came into force. The words "if pending may be continued" do not indicate a contrary intention. In *Cairney v. MacQueen*, 3 D.L.R. (2d) at p. 487, 74 C.R.T.C. at p. 38, [1956] S.C.R. at p. 563, Kellock, J., said:

> It is well settled that this new right of action abates on the death of the tortfeasor and there is nothing in the *Families' Compensation Act* which prevents that result or allows a person suing under that statute to invoke the provisions of the *Administration Act* although the victim himself might have done so.

That is the event which the Legislature had in mind in enacting the words "if pending may be continued", namely, the event of a future action properly commenced under s. 3 against a surviving tortfeasor thereafter becoming abated by reason of the subsequent death of the defendant tortfeasor. On such construction the section does not indicate a retrospective intention but an intention to apply to a death occurring after the section came into effect. On that construction the action against the executors of the pilots does not come within s. 6 or within the *Families' Compensation Act*: *Cairney v. MacQueen, supra*.

In the result, the flight in question from Vancouver to Calgary was not an international carriage (Defence Paragraph 19) and as against the executors of the pilots, the action does not come within the *Families' Compensation Act* (Defence Paragraph 21).

NORRIS, J.A.:—The facts on this appeal are fully stated in the judgments of my brothers Davey and Sheppard. The questions which arise are:

(1) As to whether or not the flight from Vancouver to Calgary and return to Vancouver was a rerouting of the original flight Los Angeles to destination Los Angeles

with stopping places at Seattle, Victoria, Vancouver and Seattle, and other points.

(2) As to whether treating the purchase of the ticket at Seattle as a separate contract of international carriage Seattle to destination Seattle with stopping places at Victoria and Vancouver, the flight Vancouver to Calgary and return was a rerouting.

(3) As to whether the action is maintainable against the representatives of the pilots in view of the provisions of the *Families' Compensation Act*, R.S.B.C. 1948, as amended in 1958, or whether the maxim *actio personalis moritur cum persona* applies.

On the first two questions there is no doubt that "rerouting" was, in view of the terms of the contract of carriage — the ticket and Walker's Tariff — in contemplation of the parties at Los Angeles when the ticket was purchased. Similarly, if there was a separate contract at Seattle, such rerouting would also be in contemplation there. That which falls to be determined is as to whether or not what was done — the trip to Calgary — was "regarded" by the parties as part of a "single operation" (Article (1) (3) of the Warsaw Convention, being the Schedule to the *Carriage by Air Act*).

Section 8(B), (C) and (D) of Walker's Tariff (ex. 10) provides as follows:

> 8. ROUTINGS
>
> (B) Rerouting — When Allowed. Any participating carrier will reroute a passenger at the passenger's request and upon presentation of the ticket, or portion thereof, then held by the passenger if:
>
> (1) With Endorsement. Such ticket bears the endorsement of the first participating carrier from which the routing is changed.
>
> (2) Without Endorsement.
>
> (a) Such ticket was issued by, or covers transportation only via the carrier to which it is presented for rerouting; or
>
> (b) The routing desired by the passenger involves transportation via such carrier and is
>
> (i) Under the applicable tariff, interchangeable with the routing designated on such ticket, or
>
> (ii) Available at the same fare designated on such ticket and if such ticket was marked "Optional Routing" by the issuing carrier at the time of issuance; or
>
> (c) Such ticket is presented, and the rerouting occurs, at a point (or, if such point is served by the participating carriers through two or more airports, at the airport) where the carrier from which the routing is changed does not maintain an office.

(C) Reroutings — Endorsement for Purpose of. Except as provided in Rule 11(B) each participating carrier will endorse the ticket or portion thereof, then held by the passenger for purpose of rerouting if the request is made at least three hours prior to the scheduled departure of the flight on which the passenger holds a reservation.

(D) Rerouting or Change in Destination at Passenger's Request — Fare Applicable.

(1) Passenger may change the routing and/or the destination designated on his ticket in accordance with paragraph (2) below, PROVIDED that after transportation has commenced, a one way ticket will not be converted into a round trip, circle trip or open jaw trip ticket.

(2) Except as otherwise provided in Rule 11(B), the fare and charges applicable when a rerouting or a change in destination is made at passenger's request at a carrier's office prior to arrival at the destination named on the original ticket, shall be the fare and charges that would have been applicable had the original ticket designated the routing and/or destination as revised by the new ticket. Any difference between the fare and charges so applicable and the fare and charges applicable to the original ticket issued to the passenger will be collected from, or refunded to the passenger, as the case may be.

I find that it is clear that when the deceased Stratton, obtained his ticket in Vancouver he made a separate contract of carriage, treating the trip to Calgary and return as a separate trip and distinct from both the original contract of international carriage and from any contract which may have been made in Seattle. He purchased a separate ticket for the Calgary trip in Vancouver (ex. 6). He did not have endorsed on the original ticket a rerouting as was required under Walker's Tariff (Section 8 (B) (1)), nor is there any evidence that he treated that trip as a rerouting. He paid the full price for the return ticket to Calgary and there is no evidence that any adjustment of fares was asked for or made at that time in respect of the unused portion of the ticket—Victoria to Vancouver and return. In this conection particular note should be taken of the provisions of Section 8 (D) (2).

Certainly the evidence as to the purchase of the ticket at Vancouver makes it clear that the deviation to Calgary was not "regarded" by the parties as part of a "single operation".

In view of the conclusion I have reached, in spite of the very strong and complete argument presented by counsel for the appellant, it is not necessary to decide whether what was done at Seattle with reference to the journey to Calgary constituted a contract. However, as my brothers have dealt

with the matter, I think that I should say that, in my opinion, the provisions of Section 12 (A) of Walker's Tariff are conclusive against the appellant's submission. It would appear to me that the arrangement made through Hatch, the agent for the Airlines in Seattle, was a mere reservation, and, tentative as it was, because of the provisions of that section, did not constitute a contract. Section 12 (A) reads as follows:

> 12. RESERVATIONS
> (A) Tentative Until Ticket Purchased
>
> (1) Applicable via CPA, ⊕, TCA. A reservation shall be tentative only, and shall not be valid, unless and until the passenger has purchased a ticket or exchange order covering transportation between the points between which space is reserved.
>
> (2) Applicable via all carriers except CPA, ⊕, TCA. A reservation shall be tentative only and shall not be valid until the passenger has secured a confirmed ticket or exchange order indicating his confirmed reserved space thereon.

On the question as to whether or not the action may be maintained against the executors and the administratrix of the two pilots, it is my opinion that the action does not come within the provisions of the *Families' Compensation Act*: See *Cairney v. MacQueen*, 3 D.L.R. (2d) at p. 488, 74 C.R.T.C. at p. 39, [1956] S.C.R. at p. 563 *per* Kellock, J. In my view s. 61 of the *Families' Compensation Act*, 1958, c. 16, is not retrospective: *Bell et al. v. Montreal Trust Co.* (1956), 6 D.L.R. (2d) 589.

In the result, the appeal of the appellant, Trans-Canada Air Lines, should be dismissed and the appeal of the appellants Vivian Phyllis Clarke and the Canada Trust Company, being the executors of the estate of the pilot, Alan Jack Clarke, and Nora Marshall, the administratrix of the estate of the pilot, John Charles Terrence Boon, allowed.

TYSOE, J.A.:—I respectfully agree with the reasons for judgment of my brother Sheppard. I propose, however, to add some observations of my own.

I think it is quite clear from the provisions of Article 1 of the Warsaw Convention that there is no international carriage unless the passenger has entered into a contract of carriage which, by its terms, contemplates a place of departure situated within the territory of one High Contracting Party and a place of destination situated within the territory of another High Contracting Party, or a contract of carriage which, by its terms, contemplates a place of departure and a place of destination within the territory of a single High

Contracting Party and an agreed stopping place within a territory subject to the sovereignty, suzerainty, mandate or authority of another Power, but that other Power need not be a party to the Convention. Therefore, as was said by Greene, L.J., in *Grein v. Imperial Airways Ltd.*, [1936] 2 All E.R. 1258 at p. 1280, the contract is the primary matter to be regarded and is the unit to which attention is to be paid in considering whether the carriage to be performed under it is international or not. Accordingly, we must determine whether the deceased Stratton was being carried under such a contract at the time of his death.

That there was international carriage while Stratton was being transported under the contract made in Los Angeles for the circle trip back to Los Angeles with an agreed stopping place at Vancouver cannot be doubted. The question is whether the transportation from Vancouver to Calgary was international carriage.

My view is that the rerouting under the original circle trip was limited to the journey from Seattle to Vancouver and to a change of carrier between Seattle and Vancouver. The destination designated on the ticket which was endorsed from T.C.A. to United Air Lines was Vancouver. That destination was not changed. No ticket for transportation from Vancouver to Calgary was issued at Seattle. What Hatch did was to reroute Stratton from Seattle to Vancouver and to reserve for Stratton a seat on Flight 8 and put Stratton on the waiting list for Flight 810 from Vancouver to Calgary. The making of the contract for one or other of those flights was left over until Stratton reached Vancouver. In my view there was no legal obligation on Stratton to pay the fare from Vancouver to Calgary and to purchase a ticket for either Flight 8 or Flight 810 at Vancouver as a result of what transpired between him and Hatch at Seattle. Stratton was free to purchase a ticket and to make the flight to Calgary on Flight 8 or Flight 810 or not to do so.

Much stress was placed by appellant's counsel on the fact that, when Hatch reserved a seat on Flight 8 and placed Stratton on the waiting list for Flight 810, he did what was required to make it unnecessary for Stratton to reconfirm either reservation some specified number of hours before the scheduled flight departure time. I am unable to see that what Hatch did in this respect had the effect of creating at Seattle a contract of carriage from there to Calgary or from Vancouver to Calgary. Section 12 (A) of Walker's Tariff is as follows:

(A) Tentative Until Ticket Purchased.

(1) Applicable via CPA, ⊖, TCA. A reservation shall be tentative only, and shall not be valid, unless and until the passenger has purchased a ticket or exchange order covering transportation between the points between which space is reserved.

(2) Applicable via all carriers except CPA, ⊖, TCA. A reservation shall be tentative only and shall not be valid until the passenger has secured a confirmed ticket or exchange order indicating his confirmed reserved space thereon.

In my view this shows that the making of a reservation does not create a contract of carriage. A reservation is not valid *unless and until the passenger has purchased a ticket or exchange order*. Section 13 (B) of Walker's Tariff provides that the carrier will cancel a reservation unless the passenger communicates with a reservations or ticket office of the carrier for reconfirmation of the reservation at a specified number of hours before the scheduled departure time. The only effect of what Hatch did was to keep the reservation in effect without it being reconfirmed. It remained a mere reservation—not valid unless and until Stratton purchased a ticket or exchange order covering transportation.

The appellant's contention that a contract of carriage from Seattle to Calgary was entered into at Seattle must be rejected. The transportation from Seattle to Vancouver by United Airlines was carried out under and as part of the contract made in Los Angeles and not under a new contract made at Seattle. At Seattle there was no more than a rerouting from Seattle to Vancouver under the contract made at Los Angeles. In my respectful opinion it cannot be said that, when travelling from Vancouver to Calgary, Stratton was being carried under the Los Angeles contract, or under a contract made in Seattle. My view is that he was being carried under a separate and distinct contract made at Vancouver for a domestic flight to Calgary.

As to the argument of appellant's counsel based on the word "regarded" in Section 3 of Article 1 of the Warsaw Convention. This section has application to the case of a carriage to be performed by several successive air carriers. Such a carriage is deemed to be one undivided carriage if it has been regarded by the parties as a single operation, whether or not it had been agreed upon under the form of a single contract or of a series of contracts. Whether or not a carriage has been regarded as a single operation is a question of fact.

The carriage covered by the contract entered into at Los Angeles did not include a Vancouver to Calgary trip. In

Los Angeles that trip was not thought of by Stratton or by any of the successive carriers. It is impossible to say that at the time the original contract was entered into at Los Angeles the parties regarded the circle trip then contemplated and the Vancouver-Calgary trip as a single operation. Then what of the situation at Seattle and Vancouver? I cannot find any evidence, direct or from which a proper inference can be drawn, that the parties regarded the carriage from Seattle to Vancouver and from Vancouver to Calgary as a single operation.

I would therefore dismiss the appeal.

Appeal dismissed.

JONCAS et al. v. PENNOCK

Alberta Supreme Court, Appellate Division, Smith, C.J.A. Macdonald, J.A., Cairns, J., and Kane, J.A. November 8, 1961.*

Solicitors II A — Duty of solicitor acting for client in transactions wherein solicitor financially interested — Onus upon solicitor to show that negotiations honestly conducted and fair and just to client — Court setting aside transfers of land from client to solicitor on grounds of concealed fraud on part of latter.

When a solicitor acts for a client in a transaction in which he himself is financially interested and takes a benefit the transaction cannot be supported unless the solicitor establishes that the negotiations with his client were honestly conducted, that the client was fully acquainted with the facts and properly advised thereon, and that the transaction was fair and just and in no way disadvantageous to the client. In the instant case transfers of land from a client to his solicitor were set aside on the grounds of concealed fraud on the part of the latter and such being the grounds the *Statute of Limitations*, R.S.A. 1955, c. 177, cannot protect the solicitor.

[*O'Connor v. Rentier*, [1925] 1 D.L.R. 398, [1925] 1 W.W.R. 38; *Biggs et al. v. London Loan & Savings Co., London Loan & Savings Co. v. Brickenden*, [1933] 3 D.L.R. 151, [1933] S.C.R. 257; affd [1934] 3 D.L.R. 465, [1934] 2 W.W.R. 545; *Demerara Bauxite Co. v. Hubbard*, [1923] A.C. 673; *Bulli Coal Mining Co. v. Osborne*, [1899] A.C. 351; *Kitchen v. Royal Air Force Ass'n*, [1958] 2 All E.R. 241, apld]

APPEAL from a decision of Milvain, J., *infra*, setting aside transfer of land from a client to his solicitor. Affirmed.

The judgment appealed from was as follows:

MILVAIN, J.:—The plaintiff brings this action as administratrix of the estate of H. Omer Houle, and is his daughter.

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*Mr. Justice Johnson, the 5th member of the Court, became ill before hearing of the case was concluded, and did not participate in the judgment.

EXHIBIT Q--GUADALAJARA MINUTES, PAGE 134 ANNEXED TO REPLY AFFIDAVIT OF STANLEY J. LEVY

Mr. Riese (Federal Republic of Germany) stated that he was in agreement with Belgium in regard to the deletion of Article V. However, his proposal was independent of the fact of whether a separate convention or protocol was being proposed, since this was a question of principle and not of form. He considered that, if the carriage was governed by the Hague Protocol, the servants and agents were already protected and could invoke the limits of liability of that Protocol. Consequently, it was not necessary to state this. On the other hand, if the carriage was governed by the Warsaw Convention, the servants and agents could not have the benefit of the limits, since the Warsaw Convention did not provide for this.

The French Representative had referred to the fact that certain interpreters of the Warsaw Convention considered that this protection of the Hague Protocol could be invoked even in the Warsaw Convention, but personally he did not think that provision could be made for the possibility of invoking the limits of the carrier under the original Warsaw Convention and he did not see why such a limitation should be prematurely introduced in the draft under preparation. There could be a Warsaw carrier who carried in his aircraft a certain number of passengers under the rules of the Warsaw Convention under circumstances where the servants and agents could not invoke the limitation of their liability and if in this same aircraft the carrier was carrying some passengers from another company, there would be the absurd situation in which some servants and agents could avail themselves of the limits, while others could not. He thought that this would be lamentable.

Mr. Ambrosini (Italy) stated that the position of the Italian Delegation[1] was contrary to that of the Belgian and German Delegations in regard to the deletion of Article V, but that he could agree with the subsidiary German proposal.

He recalled that the Association of Airline Pilots and private pilots had always sought to have this question of possible liability decided by a reasonable and definitive text. For this reason, the Assembly had decided to refer to the Legal Committee the consideration of this question and the Hague Conference had approved the text which gave to servants and agents in general the right to avail themselves of a limitation of liability. As to the more general question whether the Warsaw Convention provided for the limitation of liability of the servants or agents, his opinion was that, under the general legislative and legal system, servants and agents, as the *locum tenus* of their employer, would enjoy the same situation as the latter. From the legal point of view, there could not be a system whereby the carrier would be liable with limits and the servants and agents without limits. But since there were Representatives who had a contrary opinion, he considered it just and appropriate that at that time there should be drafted a provision according to which the servants and agents could enjoy the same right of invoking the limitation of liability. He considered that this would be equivalent to interpreting the Warsaw Convention in an authentic manner, so as to avoid any doubt which there might be concerning the scope of the draft Convention in regard to servants and agents. In this way, when the Judge coordinated and interpreted this Convention and the Hague Protocol (where there was a concrete limitation) he would be inclined to decide that this principle applied even in the case where the carriage was governed by the original Warsaw Convention.

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[1] See Vol. II, pp. 72 and 73.

Mr. Kadjidimoulas (Greece) asked who would have to prove that the actual carrier had accepted the special agreement. The user would probably have no means of proving that there was an agreement between the contracting carrier and the actual carrier.

Mr. Garnault (France) requested the pure and simple adoption of the text proposed by the Drafting Committee for, in so far as the American proposal was concerned, he thought that it could risk making still more difficult the situation of the user who would find himself obliged to prove an express consent.

The Conference rejected the proposal of the United States of America by a vote of 17 to 2.

Mr. Golstein (Belgium) requested that, in the French text, the word "renoncement" be replaced by the word "renonciation".

The Conference, on the suggestion of Messrs. Gómez Jara (Spain), Juárez Rodas (Guatemala) and Garnault (France), decided that, in the last sentence of Article III, the Spanish text should use the words "ningun and "ni", the verb "afectar" being in the singular, while the French text should use the words "aucun" and "aucune".

Article IV

The Conference adopted the text of Article IV without discussion.

Article V

Mr. Nakano (Japan) pointed out that the words "according to the Warsaw Convention, he would not be able to invoke such limits" would not permit the settlement of the situation of the servants and agents since the unamended Warsaw Convention did not contemplate them.

On the proposal of the President, seconded by the Delegation of the United Kingdom, the Conference referred to the Drafting Committee the question raised by the Delegation of Japan.

Mr. Garnault (France) proposed that, at the end of the text, the expression "ne pourrait" be replaced by "ne puisse". The President decided to refer this comment to the Drafting Committee.

Mr. Edwards (Australia) stated that the English text read: "if he acted in the scope of his employment", while Article XIV of the Hague Protocol, which referred to the same question, read: "if he proves that he acted within the scope of his employment". It would be preferable not to have two different drafts. An analogous question was raised by the use of the words "be entitled to invoke the limits of liability" while Article XIV of the Hague Protocol include the words "avail himself".

A 193

EXHIBIT S--T.W.A. LOCAL AND JOINT INTERNATIONAL PASSENGER RULE TARIFF NO. R-3 ANNEXED TO REPLY AFFIDAVIT OF STANLEY J. LEVY

WASHINGTON, D.C.

CIVIL AERONAUTICS BOARD

CERTIFICATION

I HEREBY CERTIFY that the annexed ~~xxxx~~ are true ~~xxxxx~~ copies of the 10th Revised Title Page, 25th Revised Page 6, 11th Revised Page 7, 14th Revised Page 8, 13th Revised Page 19, 8th Revised Page 20, 19th Revised Page 21, 20th Revised Page 22, 21st Revised Page 23, 17th Revised Page 24, 1st Revised Page 24-A, 13th Revised Page 25, 7th Revised Page 30, 14th Revised Page 31, 13th Revised Page 32, 19th Revised Page 33 and 20th Revised Page 34 to Local and Joint International Passenger Rules Tariff No. R-3, C.A.B. No. 17, issued by Trans World Airlines, Inc., which tariff pages were in effect on September 8, 1974, and are on file in this Board.

IN WITNESS WHEREOF, I have hereunto subscribed my name, and caused the seal of the Civil Aeronautics Board to be affixed this 20th day of January one thousand nine hundred and seventy-six.

Edwin Z. Holland

Secretary

CIVIL AERONAUTICS BOARD

Section 204(d) of the Federal Aviation Act (49 U.S.C. 1324 (d)) provides in pertinent part that "[p]ublications purporting to be published by the Board shall be competent evidence of the orders, decisions, rules, regulations, and reports of the Board—in all courts of the United States, territories, and [illegible] without further proof or authentication thereof"; and Section 1103(49 U.S.C. 1503) provides that documents and records filed with the Board shall be preserved as public records in the custody of the secretary of the Board, and shall be received as prima facie evidence of what they purport to be—in all judicial proceedings", and that "copies of, and extracts from, any such records "certified by the secretary of the Board, under the seal of the Board, shall be received in evidence with like effect as the originals."

GPO 882-526

A 194

Exhibit S Annexed to Reply Affidavit of Stanley J. Levy

OFFICIAL FILE C.A.B. (A)-C 16 C.A.B. No. 17
(See Notice on Page 4-A hereof)

10th Revised Title Page
Cancels 9th Revised Title Page

TRANS WORLD AIRLINES, INC.

LOCAL AND JOINT INTERNATIONAL PASSENGER RULES TARIFF No. R-3

Containing

Rules and Regulations

Governing the Carriage of

PASSENGERS AND BAGGAGE

Applicable
Between Points in the

UNITED STATES and CANADA

and

AFRICA, ASIA, AUSTRALASIA and EUROPE

This tariff is applicable only in connection with tariffs making reference hereto.

Rules and regulations provided herein have been filed with, or submitted to, each country as required by applicable international agreements.

For explanation of Abbreviations and Reference Marks, see Page 6.

ISSUED:	Issued by:	EFFECTIVE:
January 22, 1973	▲ W. T. LAGOW, JR. Staff Vice President - Pricing 605 Third Avenue New York, New York 10016	February 21, 1973 (Original Tariff effective October 1, 1954)

(Printed in U.S.A.) Correction No. 599

Departure from Rules 8.5.3, 8.10.1, 11.6 and 11.7 of Rules 1/52 authorized under Special Permission No. 2227 dated August 4, 1954 of the Air Transport Board.

RECEIVED
CIVIL AERONAUTICS BOARD
TARIFFS
0172 JAN 22 '73

Exhibit S Annexed to Reply Affidavit of Stanley J. Levy

Fares, rates, regulations and charges provided herein have been filed with or submitted to each country as required by applicable international agreements.

C.T.C.(A) No. 16 C. A. B. No. 17

Trans World Airlines, Inc.
Local & Joint International Passenger Rules Tariff No. R-3

25th Revised Page 6
Cancels 24th Revised Page 6

EXPLANATION OF SYMBOLS AND REFERENCE MARKS

- ■ Denotes addition.
- ♦ Denotes reduction.
- ♦ Denotes increase.
- ▲ Denotes change in wording which results in neither increase nor decrease.
- Ⓧ Denotes cancellation.
- $ Denotes dollars (See Rule 2-A).
- / Denotes "or".
- % Denotes Percentage.

EXPLANATION OF ABBREVIATIONS

- Apr. . . . April
- ATB. . . . Canadian Transport Commission (Air Transport Committee)
- Aug. . . . August
- C.A.B. . . Civil Aeronautics Board
- Can. . . . Canadian
- C.T.C.(A). Canadian Transport Commission (Air Transport Committee)
- Cy . . . . Currency
- d/b/a. . . doing business as
- Dec. . . . December
- Feb. . . . February
- IATA . . .International Air Transport Association
- Inc. . . .Incorporated
- Jan. . . .January
- Jun. . . .June
- Kilo(s). .Kilogram(s)
- Lb(s). . .Pound(s)
- Ltd. . . .Limited
- Mar. . . .March
- Mos. . . .Months
- Nov. . . .November
- Oct. . . .October
- Sept. . . .September
- TW/TWA . .Trans World Airlines, Inc.
- U.S.(A). .United States (of America)
- USSR . . .Union of Soviet Socialist Republics
- Yrs. . . .Years

▲SUBSTITUTION NOTICE

The carrier named in Column 1, having taken over the tariffs,etc.,of the carrier(s) named in Column 2 by Adoption Notice as shown in columns 3 and 4 is hereby substituted for the name of the carrier(s) in Column 2, whenever the latter appears in this tariff (as amended).

Column 1 Adopting Carrier	Column 2 Adopted Carrier	Column 3 As Per Adoption Notice C.A.B.	Column 4 As Per Adoption Notice C.T.C.(A)
Air Canada	Trans-Canada Airlines	1	1
Air-India	Air-India International	1	1
Air New Zealand Limited	Tasman Empire Airways,Limited	1	1
Air West Inc.	West Coast Airlines, Inc.	1	1
■Allegheny Airlines, Inc.	Mohawk Airlines, Inc.	27	7
■Delta Airlines, Inc.	Northeast Airlines, Inc.	171	2
Frontier Airlines, Inc.	Central Airlines, Inc.	46	
United Airlines, Inc.	Capital Airlines, Inc.	100	34

ISSUED: October 15, 1973

EFFECTIVE: November 14, 1973

(Printed in U.S.A.)

CORRECTION NO. 629

4585 0011273

TARIFFS

A 196

Exhibit S Annexed to Reply Affidavit of Stanley J. Levy

NO CHANGE ON THIS PAGE

The rules, regulations and charges provided herein have been filed with or submitted to each country as required by applicable international agreements.

C.T.C.(A) No. 16 C. A. B. No. 17

Trans World Airlines, Inc.
Local & Joint International Passenger Rules Tariff No. R-3

11th Revised Page 7
Cancels 10th Revised Page 7

RULE 1: DEFINITIONS.

As used herein:

Area No. 1 means all of the North and South American Continents and the islands adjacent thereto; Greenland, Bermuda, the West Indies and the islands of the Caribbean Sea, the Hawaiian Islands (including Midway and Palmyra).

Area No. 2 means all of Europe (including that part of the Union of the Soviet Socialist Republics in Europe) and the islands adjacent thereto; Iceland, the Azores, all of Africa and the islands adjacent thereto; Ascension Island; that part of Asia lying west of and including Iran.

Area No. 3 means all of Asia and the islands adjacent thereto except that portion included in Area No.2; all of the East Indies, Australia, New Zealand, and the islands adjacent thereto; the islands of the Pacific Ocean except those included in Area No. 1.

Australasia means Australia, New Caledonia, New Zealand; New Hebrides, Fiji, Samoa, Cook Islands, Tahiti and the Islands adjacent thereto.

Baggage, which is equivalent to luggage, means, such articles, effects and other personal property of a passenger as are necessary or appropriate for wear, use, comfort or convenience in connection with his trip. Unless otherwise specified, it shall include both checked and unchecked baggage of the passenger.

Baggage Check means those portions of the ticket which provide for the carriage of passenger's checked baggage and which are issued by Carrier as a receipt for passenger's checked baggage.

Baggage Tag means a document issued by Carrier solely for identification of checked baggage, the baggage (strap) tag portion of which is attached by carrier to a particular article of checked baggage and the baggage (claim) tag portion of which is given to the passenger.

Carriage, which is equivalent to transportation, means carriage of passenger and/or baggage by air, gratuitously or for hire.

Carrier includes the air carrier issuing the ticket and all air carriers that carry or undertake to carry the passenger and/or his baggage thereunder or perform or undertake to perform any other services related to such air carriage.

Checked Baggage, which is equivalent to registered luggage, means baggage of which the Carrier takes sole custody and for which Carrier has issued a baggage check and baggage (claim) tag(s).

Circle Trip means travel from one point and return thereto by a continuous, circuitous air route; provided that where no reasonably direct scheduled air service is available between two points, a break in the circle may be travelled by any other means of transportation without prejudice to the circle trip. A round-the-world trip is a circle trip.

Conjunction Ticket means two or more tickets concurrently issued to a passenger and which together constitute a single contract of carriage.

Continental U.S.A. means the District of Columbia and all states of the United States other than Alaska and Hawaii.

Convention means the Convention for the Unification of Certain Rules relating to International Carriage by Air, Signed at Warsaw, October 12, 1929, or that Convention as amended by the Hague Protocol, 1955, whichever may be applicable to carriage hereunder.

Days means full calendar days, including Sundays and legal holidays; provided that for the purposes of notification the balance of the day upon which notice is dispatched shall not be counted; and that for purposes of determining duration of validity, the balance of the day upon which the ticket is issued or flight commenced shall not be counted.

Europe means the area comprised of Albania, Algeria, Andorra, Austria, Azores, Belgium, Bulgaria, Canary Islands, Czechoslovakia, Denmark, Finland, France, Germany, Gibraltar, Greece, Hungary, Iceland, Ireland, Italy, Lichtenstein, Luxembourg, Madeira, Malta, Monaco, Morocco, Netherlands, Norway, Poland, Portugal, Roumania, San Marino, Spain, Sweden, Switzerland, Tunisia, Turkey in Europe and Asia, United Kingdom, U.S.S.R. (west of the Ural Mountains) and Yugoslavia.

Exchange Order means a document issued by a carrier or its agents requesting issue of and appropriate passenger ticket and baggage check or provision of services to the person named in such document.

Flight coupon means a portion of the passenger ticket that indicates particular places between which the coupon is good for carriage.

French Gold Francs means francs, consisting of 65½ milligrams of gold with a fineness of nine hundred thousandths.

(Continued on next page)

CIV. [illegible]
69 [illegible] 2274

For explanation of abbreviations, reference marks and symbols not explained hereon, see page 6.

ISSUED: February 22, 1974

EFFECTIVE: March 24, 1974

(Printed in U.S.A.)

CORRECTION NO. 648

A 197

Exhibit S Annexed to Reply Affidavit of Stanley J. Levy

...regulations and charges provided herein have ...filed with or submitted to each country as required ...applicable international agreements.

C.T.C.(A) No. 16 C.A.B. No. 17

Trans World Airlines, Inc.
Local & Joint International Passenger Rules Tariff No. R-3

14th Revised Page 8
Cancels 13th Revised Page 8

RULE 1: DEFINITIONS (Continued)

International carriage means (except when the Convention is applicable) carriage in which, according to the contract of carriage, the place of departure and any place of landing are situated in more than one state. As used in this definition, the term "state" includes all territory subject to the sovereignty, suzerainty, mandate, authority or trusteeship thereof. International carriage as defined by the Convention means any carriage in which, according to the contract of carriage, the place of departure and the place of destination, whether or not there be a break in the carriage or a transshipment, are situated either within the territories of two High Contracting Parties to the Convention, or within the territory of a single High Contracting Party to the Convention, if there is an agreed stopping place within a territory subject to the sovereignty, suzerainty, mandate or authority of another Power even though that Power is not a party to the Convention.

Middle East means the area comprised of Aden, Bahrain, Cyprus, Egypt, Ethiopia, Iran, Iraq Israel, Jordan, Kuwait, Lebanon, Muscat and Oman, Qatar, Saudi Arabia, Sudan (including only Khartoum and points north thereof), Syria, Trucial Oman and Yemen.

Normal Fare means the full fare established for a regular or usual service, the application of which is not dependent upon any limited period of ticket validity or other special circumstances. Unless otherwise specified in the provisions of this tariff, normal fares shall be considered to include the following, all year one way, round, circle trip and open-jaw trips, first class, economy class, one class Standard service, Standard service, Tourist/Coach Service and Thrift Class Service fares, on-season and off-season fares.

Open jaw trip means travel which is essentially of a round trip nature but the outward point of departure and inward point of arrival and/or outward point of arrival and inward point of departure of which are not the same.

Passenger means any person, except members of the crew, carried or to be carried in an aircraft with the consent of Carrier.

Passenger coupon means that portion of the passenger ticket constituting the passenger's written evidence of the contract of carriage.

Passenger ticket means those portions of the ticket issued by the Carrier which provide for the carriage of the passenger.

Round trip which is equivalent to return journey, means (a) travel from one point to another and return by the same air route used outbound whether or not the fares outbound and inbound be the same, or (b) travel from one point to another and return by an air route different from that used outbound, for which the same normal, through, one way fare is established.

Stopover which is equivalent to a break of journey, means a deliberate interruption of a journey by the passenger, agreed to in advance by carrier, at a point between the place of departure and the place of destination.

Ticket means the "Passenger Ticket and Baggage Check", including all flight, passenger and other coupons therein, issued by Carrier, which provide for the carriage of the passenger and his baggage.

To Validate means to stamp or write on the passenger ticket and indication that the passenger ticket has been officially issued by Carrier.

Unchecked Baggage which is equivalent to hand luggage, is baggage other than checked baggage.

■"United States of America" or "The United States" or "The U.S.A." each means unless otherwise specified, the Area comprising the 48 contiguous Federated States; The Federal District of Columbia; Alaska, Hawaii, Puerto Rico, The Virgin Islands; American Samoa; The Canal Zone; Guam, Midway and Wake Islands.

RULE 2. APPLICABILITY OF TARIFF

(A) General.

(1) This tariff shall apply to carriage of passengers and baggage, and to all services incidental thereto, performed by TW under local fares, rates and charges and by TW in conjunction with other participating carriers under joint fares, rates and charges contained in tariffs which make specific reference to this tariff for governing rules, regulations and conditions of carriage.

(2) Where TW is specifically named in any rule contained herein such rule applies to local carriage via TW and to carriage via TW in conjunction with other participating carriers named in such rule.

(3) Where participating carriers other than TW are specifically named in any rule contained herein such rule applies only to carriage in conjunction with TW.

(4) Except as otherwise provided, charges or monetary amounts shown herein in dollars or cents are stated in terms of lawful U.S. Currency. Charges or monetary amounts are also stated in terms of lawful Canadian Currency whenever so indicated directly in connection therewith.

(5) Rules stating any limitation on, or condition relating to, the liability of carriers for personal injury or death are not permitted to be included in tariffs filed pursuant to the laws of the United States, except to the extent provided in Rule 16(B) (1) with respect to Tariff C.A.B. No. 17, any such limitation or condition in any rule herein is not a part of Tariff C.A.B. No. 17, except to the extent provided in Rule 16(B)(1) with respect to Tariff C.A.B. No. 17, filed with the Civil Aeronautics Board of the United States. Nothing in this tariff modifies or waives any provision of the Convention.

(Continued on next page)

For explanation of abbreviations, reference marks and symbols not explained hereon, see page 6.

ISSUED: February 22, 1974 EFFECTIVE: March 24, 1974

(Printed in U.S.A.) CORRECTION No.649

A 198

Exhibit S Annexed to Reply Affidavit of Stanley J. Levy

OFFICIAL FILE

The rules, regulations and charges prov[illegible] herein have been filed with or submitted to each country as required by applicable international agreements.

C.T.C.(A) No. 16 C.A.B. No. 17

Trans World Airlines, Inc.
Local & Joint International Passenger Rules Tariff No. R-3

13th Revised Page 19
Cancels 12th Revised Page 19

RULE 8: LIMITATIONS OF CARRIAGE (Continued)

(C) Carriage of Unaccompanied Children

▲(1) General - Except as otherwise provided, children 5 years of age or over but under 12 years of age will be accepted for carriage on the lines of TW unaccompanied, at fares provided by Rule 24 of this tariff, provided:

(a) Advance arrangements have been made with the carrier.

▲(b) They are accompanied to the airport at the time of departure by a parent, guardian or responsible adult who shall remain with the child until enplaned and satisfactory evidence is presented that the child will be met at the airport of stopover and/or destination by another parent, guardian or responsible adult upon deplaning. ▲In addition, TWA requests that such evidence must be in writing duplicate of which must be in child's possession.

▲(c) The flight on which space is held is not expected to terminate short of or by-pass the destination.

▲(d) Upon advance arrangements, and in addition to above provisions, TWA will accept children for on-line transportation provided space has been confirmed to destination or next point of stopover; and only when through service is provided without change of aircraft, unless the parent or responsible adult at point of origin presents evidence in writing (duplicate of which must be in the child's possession) that arrangements have been made to provide a responsible guardian at the flight transfer point(s).

(e) ▲Intentionally left blank.

(2) The carrier will not accept any financial or guardianship responsibilities beyond those applicable to an adult passenger.

(3) The age limit referred to in this rule shall be the age of the child at the date of commencement of carriage. Carrier may require satisfactory evidence establishing the child's age.

(4) A child shall be considered unaccompanied if not accompanied by a fare paying passenger at least 12 years of age.

RULE 9: BAGGAGE

(A) Checked Baggage

(1) Nothing contained in this tariff shall entitle a passenger to have his baggage checked on a journey for which Carrier does not offer facilities for checking of baggage.

(2) Upon delivery to Carrier of the baggage to be checked, Carrier will insert in the ticket the number of pieces and weight of the checked baggage (which act shall constitute the issuance of the baggage check); in addition, Carrier shall issue, for identification purposes only, a baggage (claim) tag for each piece of baggage so delivered and covered by the baggage check. All checked baggage must be properly packed in suitcases or similar containers in order to ensure safe carriage with ordinary care in handling. Fragile or perishable articles, money, jewelry, silverware, negotiable papers, securities or other valuables, samples or business documents will not be accepted as checked baggage.

(B) Movement of Baggage

Checked baggage will be carried in the same aircraft as the passenger unless such carriage is deemed impracticable by Carrier, in which event Carrier will move the baggage on the next preceding or subsequent flight on which space is available.

(Continued on next page)

CANCELLED BY 15th REV PAGE 19
EFFECTIVE AUG 17 1975

For explanation of abbreviations and reference marks, used but not explained on this page, see page 6.

ISSUED: October 29, 1973

EFFECTIVE: November 28, 1973

(Printed in U.S.A.)

CORRECTION NO. 638

4615 [illegible] 2973

TARIFF [illegible]

A 199

Exhibit S Annexed to Reply Affidavit of Stanley J. Levy

[illegible] by applicable international agreements

Trans World Airlines, Inc.
Local & Joint International Passenger Rules Tariff No. R-3

[illegible] Revised Page 20
Cancels 7th Revised Page 20

RULE 9: BAGGAGE (Continued)

(C) Inspection by Carrier

Carrier has the right,but not the obligation,to verify in the presence of the passenger the contents of his baggage,and in the case of unaccompanied baggage,to open and examine such baggage whether or not the passenger is present. The existence or exercise of such right shall not be construed as an agreement,express or implied,by Carrier to carry such contents as would otherwise be precluded from carriage.

(D) Dangerous,Damageable or Unsuitable Baggage

Passenger must not include in his baggage articles which are likely to endanger the aircraft, persons or property,which are likely to be damaged by air carriage or which are unsuitably packed, or the carriage of which is forbidden by any applicable laws,regulations or orders of any state to be flown from,into or over. If, in the opinion of Carrier, the weight, size or character of baggage renders it unsuitable for carriage on the aircraft, Carrier, prior to or at any stage of the journey, may refuse to carry the baggage or any portion thereof. The following articles will be carried as baggage only with prior consent of an arrangement with Carrier:

(1) Firearms

(a) Firearms of any description will not be carried when accompanying the passenger.

(b) TWA will accept firearms (including firearms for sport purposes) only when suitably packaged and when checked for carriage in the baggage or other compartment of the aircraft not accessible to the passenger.

(c) At the time of check-in,Firearm(s) will be surrendered and the passenger will be required to make a written or verbal declaration that the Firearm(s) as surrendered is safe for transportation.

(d) When firearms used for sport purposes are carried on the aircraft, entry permits shall be in the possession of the passenger for the country or countries of transit and destination.

Exception: An authorized person performing a duty on board the aircraft,such as a law enforcement officer or diplomatic courier may be permitted to retain custody of his firearm and ammunition upon duly identifying himself to carrier's personnel at the time of check-in.

(2) Explosives,munitions,corrosives and articles,which are easily ignited:

Exception 1 for TW,AVN,BN and PAA: Ammunition may be carried up to 50 lbs. net weight per baggage compartment,and must be securely packed in strong outside containers plainly marked "Small Arms Ammunition - Handle Carefully". Each package shall also contain the following statement signed by the passenger: "This is to certify that the contents of this package are properly described by name and are in proper condition for transportation according to the regulations prescribed by the Interstate Commerce Commission and the Civil Aeronautics Board of the U.S.A." Such articles will not be carried in the cabin of the aircraft.

Exception 2: AF will accept hunting-type safety cartridges up to 100 per passenger,on condition that they be packed in a box constructed of wood of minimum thickness of 10 millimeters, and to the extent that their transportation is permitted by the countries of transit and destination.

Exception 3: All or IAC will not accept for transportation,as baggage or otherwise,any explosives,munitions,corrosives and articles easily ignited.

(3) Liquids:

Exception: All,BN,DL,IAC,NA and TW will not accept for transportation,as baggage or otherwise any liquids,and such carriers shall not be liable for any loss of or damage to liquids,or for damage to other property occasioned thereby,in the event such liquids are packed in baggage or are otherwise transported without the knowledge of the Carrier.

(4) Live animals,including birds and reptiles,other than pets and "Seeing Eye" dogs:

(Continued on next page)

CANCELLED BY 10th REV PAGE 20
EFFECTIVE AUG 17 1975

For explanation of abbreviations and reference marks,used but not explained on this page,see page 6.

ISSUED: October 29, 1973 | EFFECTIVE: November 28, 1973

(Printed in U.S.A.) CORRECTION NO. 639

[illegible] 1975 [illegible] 1973

[illegible]

A 200

Exhibit S Annexed to Reply Affidavit of Stanley J. Levy

OFFICIAL FILE

The rules, regulations and charges provided herein have been filed with or submitted to each country as required by applicable international agreements.

C.T.C.(A) No. 16 C A B No. 17

Trans World Airlines, Inc.
Local & Joint International Passenger Rules Tariff No. R-3

19th Revised Page 21
(Issued in lieu of 17th and 18th Revised Page 21 rejected by the C.A.B.)
Cancels 16th Revised Page 21

RULE 9: BAGGAGE (Continued)

(D) Dangerous, Damageable or Unsuitable Baggage - (Concluded)

(5) Pets:

(a) Acceptability

(1) Pets, including dogs, cats and household birds, when properly crated and accompanied by valid health and rabies vaccination certificates, entry permits and other documents required by countries of entry or transit will be accepted for carriage X subject to requirements of Carrier.

(2) Carrier will accept one pet (cat, dog or household bird), when accompanied by a passenger, for carriage:

(aa) In the cargo compartment of the aircraft; per container must be made out of metal, wood or polyethylene.

(bb) In the first class cabin of any flight, subject to the following additional conditions:

(i) the pet, other than "Seeing Eye" dogs trained to lead the blind must be confined in a single container and only one container per passenger will be carried;

(ii) such container cannot exceed 21 inches in length, 16 inches in width by 8 inches in height;

(iii) the container must be stored at the accompanying passenger's feet, but shall not be stored at the feet of a passenger seated in the first row of the cabin.

(iv) not more than one such container will be carried at the same time.

(3) Advance arrangements will be required.

(4) X

CANCELLED BY 20th REV PAGE 21
EFFECTIVE 3-31-75

Exception: AA will accept one or more pets when accompanied by a passenger for carriage in the cabin of any flight subject to the above conditions and subject to advance arrangements being made, and subject to the following additional conditions:

(1) one or more pets (domestic cats, dogs or houshold birds) must be confined to a single container, and only one container per compartment will be carried at the same time in any single aircraft;

(2) such container caanot exceed 13 inches in width, by 23 inches in length, by 9 inches in height and must be stored under the seat directly in front of the passenger accompanying such pet;

(3) the pet(s) must remain in the container while in the aircraft cabin.

(b) Storage Charges: A storage charge of $2.00 U.S. Dollars ($2.00 Canadian Dollars) will be made by carrier for each day, or fraction thereof, during which the pet remains uncalled for, such charges to commence to accrue six hours after arrival at the destination.

(6) Photoflash bulbs, when appropriately marked and contained in the original package of the manufacturer.

(E) Free Baggage allowance for Passengers Other than Children:

(1) First Class Fares. (Not applicable for transportation wholly between Guam Island and points in the U.S.A.). The free baggage allowance, including checked and unchecked baggage of each passenger paying the adult First Class fare, except as otherwise provided, will be 30 kilograms (66 pounds).

(2) Economy Fares. (Not applicable for transportation wholly between Guam Island and points in the U.S.A.). The free baggage allowance, including checked and unchecked baggage, of each passenger paying the adult Economy fare will be 20 kilograms (44 pounds).

Exception 1: The free baggage allowance, including checked and unchecked baggage, of each passenger paying the adult emigrant Economy fare will be 30 kilograms (66 pounds) from points in Europe or Egypt, U.A.R. to points in Canada.

(3) Combined Class Fares.

(a) For through journeys where the passenger travels partly on First Class services, and partly on Economy services, the free baggage allowance for each portion of the trip shall be that applicable to the class of service for which the fare is paid.

(b) When a passenger who has paid the First Class fare travels on Economy service, the free baggage allowance will be that applicable to the First Class Service.

(Continued on next page)

For explanation of abbreviations and reference marks used but not explained hereon, see page 6.

ISSUED: June 1, 1974 EFFECTIVE: July 1, 1974

(Printed in U.S.A.)

CORRECTION NO. 661

A 201

Exhibit S Annexed to Reply Affidavit of Stanley J. Levy

CANCELLED 21ST REV PAGE 22
3-31-75

NO CHANGE ON THIS PAGE

The rules, regulations and charges provided herein have been filed with or submitted to each country as required by applicable international agreements.

C.T.C.(A) No. 16 C.A.B. No. 17

Trans World Airlines, Inc.
Local & Joint International Passenger Rules Tariff No. R-2

20th Revised Page 22
Cancels 19th Revised Page 22

RULE 9: BAGGAGE (Continued)

(E) Free Baggage Allowance for Passengers Other than Children - (Continued)

(4) Free Baggage Allowance (Applicable only to travel wholly between Guam Island and points in the U.S.A.).

Via RW,AL,AA,BN,CO,DL,EA,FL,NA,NY,NC,NW,TT,TW,UA and WA:

(a) One piece of baggage of which the sum of the greatest outside length,plus the greatest outside height,plus the greatest outside width does not exceed 62 inches,and

(b) One additional piece of baggage of which the sum of the greatest length,plus the greatest outside height,plus the greatest outside width does not exceed 55 inches,and

(c) One or more additional pieces of baggage of which measured together if more than one piece of baggage,the sum of the greatest outside length plus the greatest outside height plus the greatest outside width does not exceed 45 inches,provided that such additional piece(s) of baggage -

(i) Via RW,AL,BN,FL,NY,TT,TW and WA may be carried on board the aircraft by the passenger only if it can be stowed under passenger's seat and is retained in the passenger's custody.

(ii) Via AA,CO,DL,EA,NA,NW and UA may be carried on the aircraft by the passenger provided it must be stored under a passenger's seat,or in an approved overhead compartment.

Exception 1: Ski equipment for AA,BN,NC,NW,TT,TW; bicycles for AA,NW,TW and surfboards for NW will not be accepted in lieu of the bag provided for in sub-paragraph (a) above.

Exception 2: Via RW,AL,AA,BN,CO,DL,EA,FL,NA,NY,NC,NW,TT,TW,UA and WA, military passengers (See Note 1) travelling for any purpose will be permitted to substitute one duffel bag,sea bag or B-4 bag (See Note 2),which exceeds the 62 inches dimension provided for in sub-paragraph (a),in lieu of the bags provided for in sub-paragraphs (a) and (b).

Note 1: "Military passengers" means military personnel of the United States Military Agencies on active duty status or who have been discharged from active military service within seven days of the date of discharge. "Military Agencies" as used herein means the Department of the Army, Navy, and Air Force, the Marine Corps and the Coast Guard, the respective academies of the Army,Navy,Air Force,and Coast Guard,and the National Guard and does not include the Reserve Officer Training Corps.

Note 2: "Duffel Bag" means a canvas cylindrical shaped bag,folded and fastened at one end,issued by the Military Agencies, "sea bag" means a canvas cylindrical shaped bag closed at one end by means of draw ropes,and "B-4 bag" means a suitcase type of handbag made of canvas with leather and metal bindings and fittings and with expandable canvas compartments on the two sides of the bag.

(5) Additional Articles. In addition to the free baggage allowance provided herein,each passenger may carry,without additional charge,the following personal effects for use in emplaning, deplaning or in flight only when retained in the passenger's custody,except that Item (h) below may be carried in the passenger or cargo compartment of the aircraft.

(a) lady's handbag or lady's pocketbook,appropriate to normal travelling dress and not used as a container for the transportation of articles which would otherwise be regarded as baggage;

(b) an overcoat, wrap or blanket;

(c) an umbrella or walking stick;

(d) a small camera and/or a pair of binoculars;

(e) a reasonable amount of reading matter for the flight;

(f) infant's food for consumption in flight;

(g) an infant's carrying basket or bassinet, (See Exception 1 below);

(h) a fully collapsible invalid's wheel chair for an incapacitated passenger dependent upon such wheel chair,subject to the availability of space;and/or braces or other prosthetic device for the passenger's use,provided that the passenger is dependent upon them.

Exception 1: AA,AII,BN,DL,EA,FAC,NA,SAS,UA and WA will not transport an infant's carrying basket or bassinet in the cabin unless the size of the basket or bassinet will permit its being secured by seat belt and a seat is reserved for the infant and child's fare paid.

Exception 2: When a passenger presents an item of baggage with the request that it be carried in the cabin of the aircraft and such baggage is acceptable for such carriage but is so fragile and/or bulky as to require the use of a seat(s),such baggage will be transported at a rate determined in accordance with Paragraph (H)(1) below for the actual weight carried but not less than the full one way passenger fare for the class of service used by the passenger between the points between which such baggage is transported. In no event will more than 75 kilograms (165 pounds) of baggage per seat be carried under this provision. The weight of baggage so carried in a seat will not be included in determining the passenger's free allowance and excess weight charges.

Any other articles,including briefcases,typewriters,heavy cameras,overnight bags,personal radios,ladies vanities or cosmetic cases,hat boxes and reading matter which cannot reasonably be read during the flight will not be carried free unless the weight thereof is included in the free baggage allowance.

(Continued on next page)

For explanation of abbreviations and reference marks used but not explained hereon, see page 6.

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CORRECTION NO. 662

The rules, regulations and charges provided herein have been filed with or submitted to each country as required by applicable international agreements.

C. T. C. (A) No. 16 C. A. B. No. 17

Trans World Airlines, Inc.
Local & Joint International Passenger Rules Tariff No. R-3

21st Revised Page 23
Cancels 20th Revised Page 23

RULE 9: BAGGAGE (Continued)

(E) Free Baggage Allowance for Passengers other than Children (Concluded)

▲(6) "Seeing Eye" Dogs.

(a) A dog trained to lead the blind will be carried free of charge in addition to the normal free baggage allowance provided that such a dog accompanies a passenger with impaired vision dependent upon it and is properly harnessed and does not occupy a seat. However, such dogs will not be carried unless proper permits are obtained for entry into the country or territory of destination and countries or territories of transit where such permits are required and only if the evidence of possession of such permits are presented prior to reservations being made. If any country or territory on the route prohibits the entry of dogs, carriage will be refused. It should be understood also that under certain operating conditions such as long non-stop flights or on certain types of aircraft it is impracticable to carry a dog in the passenger compartments and under such conditions carriage will be refused.

(b) Carrier will not be responsible in the event any such dog is refused entry into or passage through any country or territory. The owner assumes all risk of injury to or sickness or death of such animal carried under this rule.

▲(7) Accompanied Pets. The weight of accompanied pets, when accepted, including the containers carried, will not be included in the free baggage allowance of the passenger and the passenger will be assessed the applicable excess baggage weight charge.

▲(8) Rerouting.

(a) In the case of voluntary rerouting which permits a higher free baggage allowance, the higher allowance applies only to the remainder of the journey from the point of rerouting. No refund is made for the portion of the journey already performed.

(b) In the case of voluntary rerouting which makes the passenger liable for additional charges because of a lower free allowance, such additional charges will apply only from the point of rerouting.

(c) In the case of involuntary rerouting, the passenger shall be entitled to the free baggage allowance applicable for the class of service originally paid for. This provision applies even if the passenger is rerouted from first class service to tourist class service and is entitled to a fare refund.

(F) Free Baggage Allowance for Children:

(1) Children carried without charge, or for whom the fare is 10 per cent (computed in accordance with Rule 29 herein) of the normal fare, will be granted no free baggage allowance.

(2) Children for whom the fare is 50 per cent (computed in accordance with Rule 29 herein) of the normal fare will be granted free baggage allowance on the same basis as a passenger paying the normal fare and subject to the same exceptions as set forth in Paragraph (E) above.

(G) Free Baggage Allowance for Passengers Travelling Together.

When two or more passengers, travelling as one party to a common destination or point of stopover, by the same flight, present themselves and their baggage for travelling at the same time and place, they shall be permitted a total free baggage allowance equal to the combination of their individual free baggage allowances. Baggage weight in excess of the combined free baggage allowance will be subject to excess weight charges.

(Continued on next page)

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For Paragraph (H) formerly published on 20th Revised Page 23, see 17th Revised Page 24.

For explanation of abbreviations and reference marks used but not explained on this page, see page 6.

ISSUED: October 12, 1973

EFFECTIVE: November 11, 1973

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4622 OCT 1973

TARIFFS SECTION

CORRECTION NO. 626

[illegible] regulations and charges provided herein have been filed with or submitted to each country as required by applicable international agreements.

C.T.C. (A) No. 16 C.A.B. No. 17

Trans World Airlines, Inc.
Local & Joint International Passenger Rules Tariff No. R-3

17th Revised Page 24
Cancels 16th Revised Page 24

RULE 9: BAGGAGE (Continued)

(H) Excess Weight Charges. ■(Not applicable for transportation wholly between Guam Island and points in the U.S.A.)

(1) Unless otherwise specified, baggage weighing in excess of the applicable free baggage allowance will be charged for at a rate per kilogram (2.2 pounds) of one per cent (computed in accordance with Rule 29 herein) of the normal one way first class fare in effect on the date of issuance of the excess baggage ticket. If different fares are published for jet and propeller aircraft, the first class jet fare shall be used.

(2) This rate will be based on the normal first class fare, regardless of the fare paid or class of service used by the passenger.

(3) In applying excess baggage rates, fractions of less than one half kilogram will be charged for as the next higher half kilogram and fractions in excess of one half kilogram will be charged for as the next higher full kilogram.

Exception 1 for Skiing Equipment.

When baggage of a passenger weighing in excess of the free baggage allowance includes skiing equipment, as hereinafter described, the weight of one set of such skiing equipment will be deducted from the total weight and the applicable charge for two kilograms (4.4 pounds) of excess baggage will be assessed in lieu of the excess weight charges provided above, for the carriage of skiing equipment consisting of one pair of skis, one pair of ski poles and one pair of boots. If any excess weight remains after deduction of the weight of one set of ski equipment, such remaining excess weight will be charged in excess weight charges provided in Paragraph (H) above.

Exception 2 for Golfing Equipment.

When baggage of a passenger weighing in excess of the free baggage allowance includes golfing equipment, as hereinafter described, the weight of one set of such golfing equipment, but not more than 15 kilograms (33 pounds), will be deducted from the total weight and the applicable charge for 4 kilograms (8.8 pounds) of excess baggage will be assessed in lieu of the excess weight charges provided above, for the carriage of golfing equipment, consisting of golfing equipment contained in not more than one golf bag and including one pair of golf shoes. If any excess weight remains after deduction of the weight of one set of golfing equipment, such remaining excess weight will be charged the excess weight charges provided in Paragraph (H) above.

■(4) Piece Allowance (Applicable only to travel wholly between Guam Island and points in the U.S.A.) When the maximum allowance named in paragraph (E)(4)(a) above, applies, the charge for pieces in excess of such allowance shall be:

Column 1	Column 2
Where the applicable full coach adult one way fare is: In U.S. Dollars	The charge for each piece of excess or oversized baggage will be: In U.S. Dollars
$ 25.00 or Under	$ 4.00
25.01 through $ 50.00	5.00
50.01 through 120.00	6.00
120.01 through 200.00	7.00
Over $200.00	8.00

(Continued on next page)

For Paragraph (H) in effect prior to the effective date hereon, see 20th Revised Page 23.
For Paragraphs (I), (J), (K) and (L) formerly published on 16th Revised Page 24, see Original Page 24-A.
For explanation of abbreviations and reference marks used but not explained on this page, see page 6.

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4022 OCT 15 '73

TARIFFS SECTION

CORRECTION NO. 627

Exhibit S Annexed to Reply Affidavit of Stanley J. Levy

...tariff, regulations and charges provided herein have been filed with or submitted to each country as required by applicable international agreements.

C. T. C. (A) No. 16 C. A. B. No. 17

Trans World Airlines, Inc.
Local & Joint International Passenger Rules Tariff No. R-3

1st Revised Page 24-A
Cancels Original Page 24-A

RULE 9: BAGGAGE (Continued)

(I) Collection of excess Weight Charges.

At the passenger's option, excess weight charges will be payable either at the point of origin for the entire journey to final destination, or at the point of origin to the point of stopover, in which event, when carriage is resumed, charges will be payable from the point of stopover to the next point of stopover or destination. When on a journey for which a through excess baggage ticket has been issued there is an increase in the amount of excess baggage carried, carrier will issue a separate excess baggage ticket for such increase and collect charges to destination or a stopover point, as the case may be.

(J) Excess Value Charges

(1) (a) A passenger may declare a value for baggage in excess of *$20.00 (Canadian *$20.00)(250 French gold francs) or its equivalent per kilogram in the case of checked baggage and *$400.00(Canadian *$400.00)(5000 French gold francs) or its equivalent per passenger in the case of unchecked baggage or other property.

(b) When such declaration is made, a charge for such excess value will be assessed by each carrier participating in the carriage at the rate of 15 cents for each $100.00 (Canadian $100.00) or fraction thereof.

(2) This rule shall not entitle the passenger to declare such excess value for baggage in connection with carriage over Carrier's route in relation to which the above rule does not permit such declarations, unless the carriage over such route forms a part of through carriage including other routes in relation to which such declarations are permitted.

(K) Valuation Limit of Baggage. No baggage or other property of any one passenger having a declared value in excess of the amounts shown below will be accepted for carriage by the Carrier:

Carrier(s)	Valuation Limit In U.S. Currency	In Canadian Currency
AA, TW, UA	$ 25,000	$ 25,000
All	7,350	7,350
AF, DL, EA, ELAL, KLM, NA, NW, PAL, SAS	5,000	5,000
QEA and SUDAN	4,200	4,200
All other participating carriers	2,500	2,500

(L) Collection of Excess Value Charges: Excess value charges will be payable at the point of origin for the entire journey to final destination; provided that if at a stopover enroute a passenger declares a higher excess value than that originally declared, additional excess value charges for the increased value from such stopover point to final destination will be payable.

Exception 1 for AF: No increase in excess value may be made after commencement of carriage on the lines of AF.

Exception 2: Via AA, BN, EA, UA and WA excess value charges will be payable only to the point to which the baggage is checked or to the point of transfer to another carrier if such point precedes the point to which the baggage is checked.

(Continued on Page 25)

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CIVIL AERONAUTICS BOARD
TARIFFS SECTION

For Paragraphs (I),(J),(K) and (L) in effect prior to the effective date hereon, see 16th Revised Page 24.
For explanation of abbreviations and reference marks used but not explained on this page, see page 6.

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Exhibit S Annexed to Reply Affidavit of Stanley J. Levy

...provided herein ... submitted to each country ... applicable international agreements

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Trans World Airlines, Inc.
Local & Joint International Passenger Rules Tariff No. R-3

13th Revised Page 25
Cancels 12th Revised Page 25

RULE 9: BAGGAGE (Continued)

(M) Payment of Baggage Charges

Carrier will not be obligated to carry baggage until the passenger has paid all applicable charges or has complied with credit arrangements established by Carrier.

(N) Excess Weight and Value Charges on Reroutings or Cancellations. When a passenger is rerouted or his carriage cancelled, the provisions which govern with respect to the payment of additional fares or the refunding of fares shall likewise govern the payment or the refunding of excess weight charges and the payment of excess value charges, but no refund of value charges will be made when a portion of the carriage has been completed.

(O) Checking of Baggage by Carrier. Except as otherwise provided in this Rule, each Carrier, will, upon presentation by a fare-paying passenger of a valid ticket covering transportation over the lines of such Carrier, or over the lines of such Carrier and one or more other Carriers, check personal property which is tendered by the passenger for transportation as baggage, when tendered at the city or airport office designated, by the Carrier, and within the times prescribed by such Carrier but no Carrier will check property so tendered to a point -

(1) Beyond the destination, or not on the routing, designated on such ticket;

(2) Beyond a point of stopover;

(3) Beyond a point of transfer to any other Carrier, if the passenger has declared a valuation on his baggage in excess of the amounts shown in Paragraph (J)(1) of this Rule except between points where through interline service is provided without change of aircraft by two or more Carriers;

(4) Beyond a point beyond which reservations have not been confirmed; provided that when, at the time of departure from point of origin of any sector of his trip, passenger has requested continuous connecting carriage on the lines of two or more carriers to a point beyond the point to which reservations have been confirmed, baggage may be checked to such further point.

(5) Beyond a point at which the passenger is to transfer to a connecting flight and such flight is scheduled to depart from a different airport than that at which the passenger is scheduled to arrive at such point;

EXCEPTION 1: NE and WA will check baggage in such cases provided that the airports are located in the same country.

EXCEPTION 2: TW will check baggage in such cases provided that the airports are located in the same country, except not between Midway Airport and O'Hare Airport Chicago, Ill.

(6) Beyond a point at which the passenger desires to resume possession of such property or any portion thereof; or

(7) Beyond a point beyond which all applicable charges have not been paid;

(P) Delivery of Checked Baggage by Carrier

(1) Checked baggage will be delivered to the bearer of the baggage check upon payment of all unpaid sums due to Carrier under Carrier's contract of carriage or tariff and upon return to Carrier of baggage (claim) tag(s) issued in connection with such baggage. Carrier is under no obligation to ascertain that the bearer of the baggage check and baggage (claim) tag is entitled to delivery of the baggage and Carrier is not liable for any loss, damage or expense arising out of or in connection with his failure so to ascertain. Except as otherwise provided in sub-paragraph (3) hereon, delivery will be made at the destination shown in the baggage check

(2) If the provisions of sub-paragraph (1) above, are not complied with by a person claiming the baggage, Carrier will deliver the baggage only on condition that such person establishes to Carrier's satisfaction his rights thereto, and if required by Carrier, such person shall furnish adequate security to indemnify Carrier for any loss, damage or expense which may be incurred by Carrier as a result of such delivery.

(3) At the request of the bearer of the baggage check and baggage (claim) tag(s), checked baggage will be delivered at the place of departure or an intermediate stopping place upon the same conditions as provided for in sub-paragraph (1) hereof, unless precluded by government regulations, or unless time and circumstances do not permit. In delivering baggage at the place of departure or at an intermediate stopping place, Carrier shall be under no obligation to refund any charge paid.

(4) Acceptance of baggage by the bearer of the baggage check and baggage (claim) tag(s) without written complaint at the time of delivery is presumptive evidence that the baggage has been delivered in good condition and in accordance with the contract of carriage.

RULE 10: SCHEDULES, DELAYS AND CANCELLATIONS OF FLIGHTS

(A) Schedules

Times shown in timetables or elsewhere are approximate and not guaranteed, and form no part of the contract of carriage. Schedules are subject to change without notice and Carrier assumes no responsibility for making connections. Carrier will not be responsible for errors or omissions either in timetables or other representations of schedules. No employee, agent or representative of Carrier is authorized to bind Carrier by any statements or representations as to the dates or times of departure or arrival, or of the operation of any flight.

(Continued on next page)

For explanation of abbreviations and reference marks used but not explained on this page, see page 6.

ISSUED: February 12, 1968

CIVIL AERONAUTICS BOARD (TARIFFS) 71275 FEB-9'68

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TARIFFS SECTION

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...provided herein ... with or submitting to each country ... as required by applicable international agreements.

A T B No 16 C A B No 17

Trans World Airlines, Inc.
Local & Joint International Passenger Rules Tariff No. R-3

7th Revised Page 30
Cancels 6th Revised Page 30

RULE 13. PASSENGER EXPENSES EN ROUTE (Continued)

(B) Hotel Reservations

When requested by passengers, Carrier will make application on their behalf for hotel reservations, but the availability thereof is not guaranteed. All expenses incurred by Carrier in arranging, or attempting to arrange for reservations will be chargeable to passengers.

(C) Arrangements Made by Carrier

In making arrangements for hotel or other housing and board accomodations for passengers or for excursion trips on the ground or other similar arrangements whether or not the cost of such arrangements is for the account of Carrier, Carrier acts only as agent for the passenger and Carrier is not liable for loss, damage or expense of any nature whatsoever incurred by the passenger as a result of or in connection with the use by the passenger of such accommodation or the denial of the use thereof to the passenger by any other person, company or agency.

RULE 14. TAXES

Any tax or other charge imposed by government authority and collectable from a passenger will be in addition to the published fares and charges, except that transit taxes at connecting points may be absorbed under the conditions indicated in Rule 13, paragraph (A), sub-paragraphs (a) and (b), provided also that such transit tax is not applicable to such through service.

RULE 15. ADMINISTRATIVE FORMALITIES

(A) Compliance with Regulations

The passenger shall comply with all laws, regulations, orders, demands or travel requirements of countries to be flown from, into or over, and with all rules, regulations and instructions of Carrier. Carrier shall not be liable for any aid or information given by any agent or employee of Carrier to any passenger in connection with obtaining necessary documents or complying with such laws, regulations, orders, demands, requirements or instructions, whether given orally or in writing, or otherwise; or for the consequences to any passenger resulting from his failure to obtain such documents or to comply with such laws, regulations, orders, demands, requirements or instructions.

(B) Passports and Visas

(1) The passenger shall comply with all government travel requirements and present all exit, entry and other documents required by the laws, and, unless applicable laws provide otherwise, shall indemnify the Carrier for any loss, damage or expense suffered or incurred by such carrier by reason of such passenger's failure to do so. Carrier is not liable to the passenger for loss or expense due to the passenger's failure to comply with this provision. Carrier reserves the right to refuse carriage to any passenger who has not complied with applicable laws, regulations, orders, demands or requirements or whose documents are not complete.

(2) Subject to applicable laws and regulations, the passenger agrees to pay the applicable fare whenever Carrier, on government order, is required to return a passenger to his point of origin or elsewhere due to the passenger's inadmissibility into or deportation from a country, whether of transit or of destination. Carrier may apply to the payment of such fares any funds paid by the passenger to Carrier for unused carriage, or any funds of the passenger in the possession of Carrier. The fare collected for carriage to the point of refusal or deportation will not be refunded by Carrier.

(C) Customs Inspection

If required, the passenger must attend inspection of his baggage, checked or unchecked, by customs or other government officials. Carrier accepts no responsibility toward the passenger, if the latter fails to observe this condition. If damage is caused to Carrier because of the passenger's failure to observe this condition, the passenger shall indemnify Carrier therefor.

(D) Government Regulation

No liability shall attach to Carrier if Carrier in good faith determines that what it understands to be applicable law, government regulation, demand, order or requirement, requires that it refuse and it does refuse to carry a passenger.

RULE 16. LIABILITY OF CARRIERS

(A) Successive Carriers

Carriage to be performed under one ticket or under a ticket and any conjunction ticket issued in connection therewith by several successive Carriers is regarded as a single operation.

(R)Reissued without change.

(Continued on next page)

For explanation of abbreviations and reference marks used but not explained on this page, see page 6.

ISSUED: July 22, 1963

Issued by:
JOHN R. BARCH
Vice President—Industry Association Affairs
380 Madison Avenue, New York 17, N.Y.

EFFECTIVE: August 21, 1963

(Printed in U. S. A.)

CORRECTION NO. 350

RECEIVED
AFFIDAVIT STAMP
12 JUL 1963
TARIFFS SECTION

...ions and charges provided herein ... C.T.C. (A) No 16 C.A.B. No 17
...ed to each country ...
...ble international agreements.

Pan American World Airways, Inc.
Local & Joint International Passenger Rules Tariff No. R-3

14th Revised Page 31
Cancels 13th Revised Page 31

RULE 16 LIABILITY OF CARRIERS (Continued)

(B) Laws and Provisions Applicable.

(1)(a) Applicable only to *AA, AC, AF, AI, AL, ALT, ANA, ARG, AUA, AVN, AZ, BEA, BN, BOAC, CATHAY, CPA, CO, CSA, CYPRUS, DL, ELAL, ETHIOPIAN, FINNAIR, FL, IB, JAL, JAT, KLM, LH, MAL, MEA, MS, NA, NE, NW, NYA, OA, PAA, PAL, PIA, QEA, RAC, RW, SA, SAB, SAS, SR, TAP, TEAL, TT, Tw, and *UA.

The Carrier shall avail itself of the limitation of liability provided in the Convention for the Unification of Certain Rules Relating to International Carriage by Air signed at Warsaw October 12th, 1929, or provided in the said Convention as amended by the Protocol signed at The Hague September 28th, 1955. However, in accordance with Article 22 (1) of said Convention, or said Convention as amended by said Protocol, the Carrier agrees that, as to all international transportation by the Carrier as defined in the said Convention or said Convention as amended by said Protocol, which, according to the Contract of Carriage, includes a point in the United States of America as a point of origin, point of destination, or agreed stopping place.

(i) The limit of liability for each passenger for death, wounding, or other bodily injury shall be the sum of U.S. $75,000 (Canadian $75,750.00) inclusive of legal fees and costs except that, in case of a claim brought in a State where provision is made for separate award of legal fees and costs, the limit shall be the sum of U.S. $58,000 (Canadian $58,580.00) exclusive of legal fees and costs.

(ii) The Carrier shall not, with respect to any claim arising out of the death, wounding, or other bodily injury of a passenger, avail itself of any defense under Article 20 (1) of said Convention or said Convention as amended by said Protocol. Nothing herein shall be deemed to affect the rights and liabilities of the Carrier with regard to any claim brought by, or on behalf of, or in respect of, any person who has wilfully caused damage which resulted in death, wounding, or other bodily injury of a passenger.

(b) Except as provided in subparagraph (1) (a) above, carriage hereunder is subject to the rules and limitations relating to liability established by the Convention for the Unification of Certain Rules Relating to International Carriage by Air, signed at Warsaw, October 12, 1929 or that Convention as amended by The Hague Protocol, 1955, whichever may be applicable (hereinafter called "the Convention"), unless such carriage is not international carriage as defined by the Convention. In the international carriage (as defined in the Convention) of passengers, the liability of the carrier for each passenger is limited to the sum of 125,000 French gold francs or its equivalent (U. S. equivalent approximately †$10,000.00) or 250,000 French gold francs or its equivalent (U. S. equivalent approximately †$20,000.00) if The Hague Protocol Amendment of the Convention is applicable. (See Note Page 32).

(c) Applicable to All Participating Carriers Except AA, AC, AF, AI, AL, ALT, ANA, ARG, AUA, AVN, AZ, BEA, BN, BOAC, CATHAY, CPA, CO, CSA, CYPRUS, DL, EA, ELAL, ETHIOPIAN, FINNAIR, FL, IB, JAL, JAT, KLM, LH, MAL, MEA, MS, NA, NE, NW, NYA, OA, PAA, PAL, PIA, QEA, RAC, RW, SA, SAB, SAS, SR, TAP, TEAL, TT, Tw, UA, and WA.

Carrier shall avail itself of the limitation of liability to passengers as provided in the Convention (see Rule 1 herein); and, in the international transportation of passengers, the liability of the carrier for personal injury or death of each passenger shall be limited to the sum of 125,000 French gold francs or its equivalent (the United States equivalent is approximately †$10,000.00) or 250,000 French gold francs or its equivalent (the United States equivalent is approximately †$20,000.00) if The Hague Protocol Amendment of the Convention is applicable. (See Note Page 32).

(d) Intentionally Left Blank.

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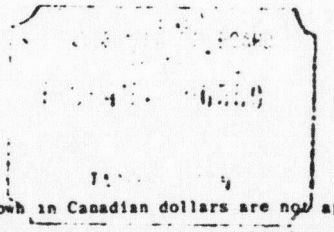

* Amounts shown in Canadian dollars are not applicable for AA or UA.

For explanation of abbreviations and reference marks used but not explained on this page, see page 6.

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CORRECTION NO. 644

Exhibit S Annexed to Reply Affidavit of Stanley J. Levy

NO CHANGE ON THIS PAGE.
C T C (A) No 16 C A B No 17

Trans World Airlines, Inc.
Local & Joint International Passenger Rules Tariff No. R-3

13th Revised Page 32
Cancels 12th Revised Page 32

RULE 16: LIABILITY OF CARRIERS (Continued)

(B) Laws and Provisions Applicable (Continued)

(1)(e) Applicable only to EA and WA

The carrier shall avail itself of the limitation of liability provided in the Convention for the Unification of Certain Rules relating to International Carriage by Air signed at Warsaw, October 12, 1929, or provided in the said Convention as amended by the protocol signed at The Hague, September 28, 1955. However, in accordance with Article 22 (1) of said Convention or said Convention as amended by said protocol, the carrier agrees that, as to all international transportation by the carrier as defined in the said Convention, or said Convention as amended by said protocol which according to the contract of carriage, includes a point in the United States of America as a point of origin, point of destination, or agreed stopping place: (1) the limit of liability for each passenger for death, wounding, or other bodily injury shall be the sum of U. S. Dollars 75,000 (Canadian Dollars 75,750.00) inclusive of legal fees and costs except that, in case of a claim brought in a state where provision is made for separate award of legal fees and costs, the limit shall be the sum of U. S. Dollars 58,000 (Canadian Dollars 58,580.00) exclusive of legal fees and costs (2) the carrier shall not, with respect to any claim arising out of the death, wounding, or other bodily injury of a passenger, avail itself of any defense under Article 20 (1) of said Convention or said Convention as amended by said protocol. Nothing herein shall be deemed to affect the rights and liabilities of the carrier with regard to any claim brought by, on behalf of, or in respect of any person who has wilfully caused damage which resulted in death, wounding, or other bodily injury of a passenger. (See Note Below)

Note - Rules stating any limitation on, or condition relating to, the liability of carriers for personal injury or death are not permitted to be included in tariffs filed pursuant to the laws of the United States, except to the extent provided in Rule 16 (B) (1) with respect to Tariff C.A.B. No. 17. Insofar as this rule states any such limitation or condition it is included herein, except to the extent provided in Rule 16 (B) (1) with respect to Tariff C.A.B. No. 17, as part of the tariff filed with governments other than the United States and not as part of tariff C.A.B. No. 17 filed with the Civil Aeronautics Board of the United States.

(2) Carrier's name may be abbreviated in the ticket, the full name and its abbreviation being set forth in Carrier's tariffs, and Carrier's address shall be the airport of departure shown opposite the first abbreviation of Carrier's name in the ticket, and for the purpose of the Convention the agreed stopping places (which may be altered by Carrier in case of necessity) are those places, except the place of departure and the place of destination, set forth in the ticket and any conjunction ticket issued therewith, or shown in Carrier's timetable as scheduled stopping places on the passenger's route. A list giving the full name and abbreviation thereof of each Carrier in this tariff is set forth on pages 5 and 6.

(3) To the extent not in conflict with the provisions of subparagraphs (1) and (2) above, all carriage hereunder and other services performed by each Carrier are subject to:

(a) applicable laws (including national laws implementing the Convention or extending the rules of the Convention to carriage which is not "international carriage" as defined in the Convention), government regulations, orders and requirements;

Exception of KLM: Without prejudice to Rule 16(B)(1) all rights and liabilities of KLM arising out of, or in connection with the contract of carriage, or in connection with any transportation or other services offered or performed pursuant thereto, shall be governed by the national law of The Netherlands.

(b) provisions set forth in the passenger's ticket;

(c) applicable tariffs;

(Continued on next page)

For explanation of abbreviations and reference marks used but not explained on this page, see Page 6.

ISSUED: February 5, 1974 EFFECTIVE: March 7, 1974

(Printed in U.S.A.) CORRECTION NO. 645

A 209

Exhibit S Annexed to Reply Affidavit of Stanley J. Levy

...ions with respect thereto have been submitted to each country as required by applicable international agreements

C.T.C.(A) No. 16 C.A.B. No. 17

Trans World Airlines, Inc.
Local & Joint International Passenger Rules Tariff No. R-3

19th Revised Page 33
Cancels 18th Revised Page 33

RULE 16: LIABILITY OF CARRIERS (Concluded)

(B) Laws and Provisions Applicable (Concluded)

(3) (Concluded)

(d) except in transportation between a place in the United States and any place outside thereof and also between a place in Canada and any place outside thereof, conditions of carriage, regulations and timetables (but not the times of departure and arrival therein specified) of Carrier, which may be inspected at any of its offices and at airports from which it operates regular services.

(C) Limitation of Liability

Except as the Convention or other applicable law may otherwise require:

(1) Carrier is not liable for any death, injury, delay, loss or other damage of whatsoever nature hereinafter in this tariff collectively referred to as "damage") to passengers or unchecked baggage arising out of or in connection with carriage or other services performed by carrier incidental thereto, unless such damage is caused by the negligence of Carrier. Assistance rendered to the passenger by Carrier's employees in loading, unloading, or transshipping baggage shall be considered as gratuitous service to the passenger. AZ and SAB are not liable for damage to such unchecked baggage incurred during, or as a result of such service, irrespective of the negligence of carrier's employees. (See Note, Page 32).

(2) Carrier is not liable for any damage directly and solely arising out of its compliance with any laws, government regulations, orders or requirements or from failure of passenger to comply with same, or out of any cause beyond carrier's control.

(3) Any liability of carrier is limited to †$20.00 (250 French gold francs, consisting of 65½ milligrams of gold with a fineness of nine hundred thousandths) per kilogram in the case of checked baggage and †$400.00 (5000 French gold francs) per passenger in the case of unchecked baggage or other property, unless a higher value is declared in advance and additional charges are paid pursuant to carrier's regulations. In that event the liability of the carrier shall be limited to such higher declared value. In no case shall the carrier's liability exceed the actual loss suffered by the passenger. All claims are subject to proof of amount of loss.
Exception: This provision is applicable to AF only when carriage on the lines of AF originates in the U.S.A. or Canada. In all other cases, any liability to AF is limited: (a) in the case of checked baggage, to the actual value of such baggage or 250 gold francs per kilogram, whichever is less; (b) in the case of unchecked baggage, to the actual value of such baggage or 5,000 gold francs per passenger, whichever is less.

(4) (a) In any event liability of Carrier for delay of a passenger shall not exceed 125,000 French gold francs, or its equivalent.
(b) In any event liability of Carrier for death or injury shall not exceed 125,000 French gold francs, or its equivalent. (See Note, Page 32).

(5) In the event of delivery to the passenger of part but not all of his checked baggage, or in the event of damage to part but not all of such baggage, the liability of the Carrier with respect to the undelivered or damaged portion shall be reduced proportionately on the basis of weight, notwithstanding the value of any part of the baggage or contents thereof.

(6) Carrier is not liable for damage to a passenger's baggage caused by property contained in the passenger's baggage. Any passenger whose property caused damage to another passenger's baggage or to the property of Carrier shall indemnify Carrier for all losses and expenses incurred by Carrier as a result thereof.

(7) Carrier is not liable for loss, damage to, or delay in the delivery of fragile or perishable articles, money, jewelry, silverware, negotiable papers, securities or other valuables, business documents, or samples which are included in the passenger's checked baggage, whether with or without the knowledge of Carrier.

(8) Carrier may refuse to accept any articles which do not constitute baggage as such term is defined herein, but if delivered to and received by Carrier, such articles shall be deemed to be within the baggage valuation and limit of liability, and shall be subject to the published rates and charges of Carrier.

(9) (a) Liability of Carrier for damages shall be limited to occurrences on its own line, except in the case of checked baggage as to which the passenger also has a right of action against the first or last carrier.
(b) A carrier issuing a ticket or checking baggage for carriage over the lines of other does so only as agent. (See Note, Page 32).

(10) Whenever KLM's and AZ's liability towards the passenger is limited or excluded under this Rule or under applicable laws, the passenger and all other persons or agencies who are party to the contract of Carrier shall hold KLM and AZ free and harmless from any third party claims concerning passengers or baggage instituted in excess of such limitations or notwithstanding such provisions excluding KLM's and AZ's liability.

(11) Carrier shall not be liable in any event for any consequential or special damage arising from carriage subject to this tariff, whether or not Carrier had knowledge that such damages might be incurred.

(12) Any exclusion or limitation of liability of Carrier under this tariff or the ticket shall apply to agents, servants, or representatives of the Carrier acting within the scope of their employment and also to any person whose aircraft is used by the Carrier and its agents, servants or representatives acting within the scope of their employment.

For explanation of abbreviations and reference marks used but not explained on this page, see Page 6.

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CORRECTION NO. 646

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A 210

Exhibit S Annexed to Reply Affidavit of Stanley J. Levy

...and charges provided herein have ...submitted to each country as required ...international agreements.

NO CHANGE ON THIS PAGE.
C.T.C.(A) No. 16 C.A.B. No. 17

...World Airlines, Inc.
...& Joint International Passenger Rules Tariff No. R-3

20th Revised Page 34
Cancels 19th Revised Page 34

RULE 17: TIME LIMITATIONS ON CLAIMS AND ACTIONS

(A) No action shall lie in the case of damage to baggage unless the person entitled to delivery complains to the carrier forthwith after the discovery of the damage, and, at the latest, within seven days from the date of receipt; and in the case of delay or loss, complaint must be made at the latest within 21 days from the date on which the baggage has been placed at his disposal (in the case of delay), or should have been placed at his disposal (in the case of loss). Every complaint must be made in writing and dispatched within the time aforesaid. Where carriage is not "international carriage" as defined in the Convention, failure to give notice shall not be a bar to suit where claimant proves that (1) it was not reasonably possible for him to give such notice, or (2) that notice was not given due to fraud on the part of carrier, or (3) the management of carrier had knowledge of damage to passenger's baggage.

(B) Any right to damages against carrier shall be extinguished unless an action is brought within two years reckoned from the date of arrival at the destination, or from the date on which the aircraft ought to have arrived, or from the date on which the carriage stopped.

RULE 18: OVERRIDING LAW

Insofar as any provision contained or referred to in the ticket or in this tariff may be contrary to a law, government regulation, order or requirement which severally cannot be waived by agreement of the parties, such provisions shall remain applicable and be considered as part of the contract of carriage to the extent only that such provision is not contrary thereto. The invalidity of any provision shall not affect any other part.

RULE 19: MODIFICATION AND WAIVER

No agent, servant or representative of Carrier has authority to alter, modify or waive any provisions of the contract of carriage of of this tariff.

RULE 20: ROUND TRIP FARES

(A) General

(1) When a round trip ticket is purchased prior to commencement of carriage, the fare for a round trip shall be the round trip fare published in the applicable tariff(s) of Carrier via the desired routing and for the class of service used.

(B) Application to Combined Service, and/or Special Short Limit Validity

(1) When round trip, first class, economy or short limit fares are applicable between the same points, round trip passengers will be charged the sum of 50% (computed in accordance with Rule 29) of the round trip fares applicable to the classes of service used; provided that:

(a) such fares, which by their terms are not combinable with other fares, shall not be used in the construction of round trip fares, and

(b) the shortest validity period applicable to any such fare used shall apply to the entire round trip.

#RULE 21: CIRCLE TRIP FARES

When a circle trip ticket is purchased prior to commencement of carriage, the fare for such circle trip shall be the sum of 50 percent (computed in accordance with Rule 29) of the applicable round trip fares for the class of service to be used for the respective sections of carriage, constructed from point of origin via the desired routing, that produces the lowest fare for the circle trip; provided that:

(a) fares which by their terms are not combinable with other fares, shall not be used in the construction of circle trip fares; and

(b) if the fare for a circle trip travelled in one class of service constructed as specified above is less than the highest direct route round trip fare applicable to the same class of service between any two points on the circle trip route, such highest direct route round trip fare shall apply; and

Exception: This provision shall not apply to circle trip fares constructed for carriage completely around the world in the same general direction.

(c) the fare for a circle trip travelled partly in one class of service and partly in another class of service shall be constructed in accordance with the provisions of Rule 5(D)(3),(4) and (5) herein.

(d) the shortest validity period applicable to any fare used shall apply to the entire circle trip.

(e) the circle trip fare authorized herein will not apply when any part of the circle trip is via the services of a Non-Scheduled carrier or on a charter or Military flight.

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Departure from the terms of sections 221.50 and 221.61 of its Economic Regulations authorized by the Civil Aeronautics Board (5800).

For explanation of abbreviations and reference marks used but not explained on this page, see Page 6.

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CORRECTION NO. 647

A 211

EXHIBIT T--14C.F.R., PAGES 120 TO 123 ANNEXED TO REPLY AFFIDAVIT OF STANLEY J. LEVY

points must be shown in the place where the index of points would have been published. The following are some examples of such explanations which may be modified to explain the particular alphabetical arrangement employed in the tariff:

INDEX OF POINTS OF ORIGIN AND DESTINATION

Points of origin are arranged alphabetically as headline points throughout the tariff. Points of destination are arranged alphabetically as sideline points under each origin point. (See § 221.37(b)(1).)

or

Points in the United States are arranged alphabetically as headline points throughout the tariff. Points in Canada are arranged alphabetically as sideline points under each headline point. (See § 221.37(b)(3).)

or

Points of origin and destination are arranged alphabetically throughout the tariff (or each section or table of fares (or rates)). (See § 221.37(b)(4).)

or

Points of origin and destination are arranged alphabetically throughout the tariff (or each section or table of fares (or rates)) first by States or provinces, thence by points of origin and destination grouped under their respective States or provinces. (See § 221.37(b)(4).)

(d) *When reference to items (or similar units) or pages may be omitted from index.* If an index is published in a tariff containing rates or fares for account of two or more carriers, the index of points shall show the carrier or carriers serving each point but may omit reference to each item (or similar unit) or page where each point appears, provided that the tariff conforms with § 221.37(b) and that the explanation of the alphabetical arrangement of points is shown in the heading of the index on each page thereof in the manner set forth in paragraph (c) of this section.

§ 221.38 Rules and regulations.

(a) *Contents.* Except as otherwise provided in this part, the rules and regulations of each tariff shall contain:

(1) Such explanatory statements regarding the fares, rates, rules or other provisions contained in the tariff as may be necessary to remove all doubt as to their application.

(2) All of the terms, conditions, or other provisions which affect the rates, fares, or charges for air transportation named in the tariff.

(3) All of the rates or charges for and the provisions governing terminal services and all other services which the carrier undertakes or holds out to perform on, for, or in connection with air transportation.

(4) All other provisions and charges which in any way increase or decrease the amount to be paid on any shipment or by any passenger or by any charterer or which in any way increase or decrease the value of the services rendered to the shipment or passenger or charterer.

(5) The rules and regulations relating to the transportation of explosives and other dangerous or restricted articles, showing the articles which are not acceptable for transportation as well as those articles which are acceptable for transportation only when specified packing, marking, and labeling requirements have been met. Such rules and regulations shall further provide the specified packing, marking, and labeling requirements. All such provisions shall be in conformity with Part 103 of the Federal Aviation Aegulations (14 CFR Part 103) (as amended or revised from time to time), including those portions of the Interstate Commerce Commission Regulations for Transportation of Explosives and Other Dangerous Articles which are referred to in Part 103 of the Federal Aviation Regulations (14 CFR Part 103) The rules and regulations required by this subparagraph are required to be set forth only in those tariffs which contain rates or charges for the transportation of explosives and other dangerous or restricted articles or in a tariff issued in accordance with § 221.104.

(6) For individually ticketed passenger service, the name of each type of aircraft used in rendering such service by manufacturer model designation and a description of the seating configuration (or configurations if there are variations) of each type of aircraft. Where fares are provided for different classes or types of passenger service (that is, first class, coach, day coach, night coach, tourist, economy or whatever other class or type of service is provided under the tariff), the tariff shall specify the type of aircraft and the seating configuration used on such aircraft for each class or type of passenger service. When two or more classes or types of passenger serv-

ice are performed in a single aircraft, the seating configuration for each type or class shall be stated. The description of the seating configuration of each type of service on each aircraft shall include the following:

(i) The number of seats abreast.

(ii) The maximum and minimum distances in inches from the forward edge of a seat to the forward edge of the seat directly in front thereof (pitch).

(iii) The number of lounge seats.

(iv) The number of lounge seats or other seats withheld from sale and available for passengers' temporary use during flight. If some or all lounge seats are available for sale under certain conditions, such fact and conditions shall be explicitly stated.

(7) *Denied boarding compensation.* For carriers subject to Part 250, denied boarding compensation as specified in Part 250.

(8) [Reserved]

(9) [Reserved]

(10) The charter tariff provisions required by Parts 207, 208, 212, 214, and 295, as applicable.

(b) *Rule numbers.* Each rule or regulation shall be given a separate designation. The same designation shall not be assigned to more than one rule in the tariff. The rules and regulations shall be shown in the tariff in numerical or alphabetical order. A gap between rule numbers may be allowed for the addition of future rules, for example, the rules in an original tariff may be numbered Rules Nos. 5, 10, 15, etc. When a rule contains more than one paragraph, the paragraphs and subparagraphs shall be consecutively lettered or numbered.

(c) *Single subject and caption.* Each numbered rule shall be confined to a single subject and shall bear a caption descriptive of the subject matter therein. Such caption shall be shown in distinctive type.

(d) *Rules of limited application.* A rule affecting only a particular rate, fare, or other provision in the tariff shall be specifically referred to in connection with such rate, fare, or other provision, and such rule shall indicate that it is applicable only in connection with such rate, fare or other provision. Such rule shall not be published in a separate governing rules tariff.

(e) *Clear, explicit, and definite statements required.* All rules and regulations shall be stated in clear, explicit, and definite terms. Ambiguous or indefinite terms or language shall not be used. Where the rules and regulations contain any rates or charges or other amounts affecting the charges to be paid on any shipment or by any passenger or charterer, such rates, charges, or amounts shall be stated in United States dollars or cents to be applied to a definite unit of weight, measurement, time, currency, or other definite measure. When transportation fares or rates are published in foreign currency under authority of § 221.51(b), any charges or other amounts set forth in rules or regulations may be stated in such foreign currency in addition to the required statement in United States currency, provided that such charges or other amounts in foreign currency are substantially equivalent in value to the respective charges or other amounts stated in United States currency. Where the carrier holds out to perform terminal or other services in connection with air transportation, the rule covering such services shall describe the exact service, state the rates or charges which the carrier will make for such service, and set forth in definite terms the conditions under which the carrier will perform such service. Where a rule provides a charge in the nature of a penalty, the rule shall state the exact conditions under which such charge will be imposed. Rules and regulations shall not contain indefinite statements to the effect that traffic of any nature will be "taken only by special arrangements", or that services will be performed or penalties imposed "at carrier's option", or that the carrier "reserves the right" to act or to refrain from acting in a specified manner, or other provisions of like import; instead, the rules shall state definitely what the carrier will or will not do under the exact conditions stated in the rules.

(f) *Conflicting or duplicating rules prohibited.* The publication of rules or regulations which duplicate or conflict with other rules or regulations published in the same or any other tariff for account of the same carrier or carriers and applicable to or in connection with the same transportation is hereby prohibited.

(g) *Separate rules tariff.* If desired, the rules and regulations required by this section may be published in separate

A 213

Exhibit T Annexed to Reply Affidavit of Stanley J. Levy

governing tariffs to the extent authorized and in the manner required by §§ 221.100 through 221.104, and 221.107.

(h) *Personal liability rules.* No provision of the Board's regulations issued under this part or elsewhere shall be construed to require on and after March 2, 1954, the filing of any tariff rules stating any limitation on or condition relating to, the carrier's liability for personal injury or death. No subsequent regulation issued by the Board shall be construed to supersede or modify this rule of construction except to the extent that such regulation shall do so in express terms.

(i) *Carriers' extension of credit—passenger tariffs, property tariffs, joint transportation*—(1) *Passenger tariffs.* All air carriers and foreign air carriers shall set forth in their tariffs governing the transportation of persons, including passengers' baggage, their charges, rules, regulations, and practices relating to the extension of credit for payment of charges applicable to such transportation services (including services incidental thereto). Such tariff provisions for extension of credit shall include but are not limited to (i) a definite time within which a passenger is required to pay the carrier for the transportation and other services purchased on credit; (ii) the amount of money, if any, which a passenger will be required to keep on continuous deposit with the carrier, and the rate of interest which the carrier will pay the passenger on such deposit; and (iii) any charges which the passenger will be required to pay the carrier in connection with the extension of credit, including but not limited to charges for credit investigations, interest or other charges for the extension of credit, or penalties for late payments. Nothing in this rule is intended to preclude the filing of a manual embodying the minor details of the Universal Air Travel Plan (UATP).* However, the rules governing the payment of interest on UATP deposits made by a subscriber (passenger) with a carrier shall be set forth in a tariff document rather than in a manual filed with the Board. Also, when references to a manual are set forth in the tariff, the appropriate part of the manual shall be made available for public inspection as is presently provided for tariff publications by Subpart N of this Part 221.

(2) *Property tariffs.* All direct and indirect air carriers and foreign air carriers shall state in their tariffs governing transportation of property their rules, regulations and practices relating to the billing of shippers (including the billing of indirect air carriers by direct air carriers) for transportation services rendered, and the payment of rendered bills by shippers for such services. Such statements, applicable to all shippers or any class of shippers, shall include the billing intervals, the period covered by each billing, the time within which the bills are payable, and any charges for late payment.

(3) *Credit on joint transportation.* Notwithstanding § 221.10(a), a tariff issued by a carrier may include provisions under which the issuing carrier offers to extend credit for rates, fares or charges to be collected by the issuing carrier and which are applicable to through transportation performed by the issuing carrier in conjunction with connecting carriers regardless of whether such transportation is subject to a through joint fare or rate or a combination of separately established fares or rates of the respective carriers. Similarly, a tariff issued by an agent may include provisions for account of an individual participating carrier under which such carrier offers to extend credit for rates, fares, or charges to be collected by such carrier and which are applicable to through transportation performed by such carrier in conjunction with connecting carriers regardless of whether such transportation is subject to a through joint fare or rate or a combination of separately established fares or rates of the respective carriers.

(j) *Notice of limitation of liability for death or injury under the Warsaw Convention.* Notwithstanding the provisions of paragraph (h) of this section, each air carrier and foreign air carrier shall publish in its tariffs a provision stating whether it avails itself of the limitation on liability to passengers as

*For a discussion of the contents of a UATP manual, see the Board's opinions in Universal Air Travel Plan, 12 CAB 601, 604 (1951) and Passenger Credit Plans Investigation, Order E-19197, Jan. 16, 1963.

provided in Article 22(1) of the Warsaw Convention or whether it has elected to agree to a higher limit of liability by a tariff provision. Unless the carrier elects to assume unlimited liability, its tariffs shall contain a statement as to the applicability and effect of the Warsaw Convention, including the amount of the liability limit in dollars. Where applicable, a statement advising passengers of the amount of any higher limit of liability assumed by the carrier shall be added.

(k) *Individual carrier provisions governing joint rates or fares.* Provisions governing joint rates or fares may be published for account of an individual carrier participating in such joint rates or fares provided that the tariff clearly indicates how such individual carrier's provisions apply to the through transportation over the applicable joint routes comprised of such carrier and other carriers who either do not maintain such provisions or who maintain different provisions on the same subject matter.

(Secs. 102, 416, 72 Stat. 240, 771, Secs. 3, 4, 80 Stat. 383, 81 Stat. 54; 49 U.S.C. 1302, 1386, 5 U.S.C. 552, 553) [ER-439, 30 F.R. 9439, July 29, 1965, as amended by ER-451, 31 F.R. 2425, Feb. 5, 1966; ER-504, 32 F.R. 11938, Aug. 18, 1967; ER-619, 35 FR 7298, May 9, 1970; ER-795, 38 FR 9222, Apr. 12, 1973]

§ 221.39 Classification ratings or exceptions to governing classification ratings.

(a) *Classification ratings.* Each tariff containing class rates shall list all articles or commodities accepted for transportation together with their applicable ratings in the following manner:

(1) The articles or commodities on which the ratings apply shall be described and listed in an orderly manner, and opposite each article or commodity there shall be shown the class rating applicable to the respective article or commodity.

(2) The articles or commodities shall be listed alphabetically in one sequence throughout the section of class ratings to the greatest extent that is practicable. A group of articles or commodities may be published under a generic commodity heading provided that the generic heading appears in its proper alphabetical sequence in the section of class ratings and that the articles or commodities in such group are listed alphabetically and indented under such generic heading.

(3) The class ratings assigned to the articles or commodities shall be numbered classes corresponding identically to the numbered classes for which class rates are provided. (See § 221.73(c) describing rates on numbered classes.)

(4) Each commodity description and its applicable class rating shall be published in a separate, numbered item. The items shall be shown in numerical order in sequence with other item numbers as may be used in the tariff.

(5) An item shall not state that the rating on any article or commodity will be that applying on another article or commodity, for example, an item shall not provide that "paper wrappers" will take "wrapping paper" ratings. (If "paper wrappers" are to take the same rating as "wrapping paper", such rating shall be shown in the item listing "paper wrappers".)

(6) The publication of class ratings which duplicate or conflict with other class ratings is hereby prohibited. Also, class ratings shall not take precedence over other class ratings (except as provided in paragraph (c) of this section).

(7) The following format is suggested for the publication of classification ratings in the tariff containing the class rates, but may be adjusted to conform with the format or context of a particular tariff:

CLASSIFICATION RATINGS

Applicable only in connection with class rates Section ——)

Item No.	Article or commodity	Class

(b) *Classification ratings in governing tariff.* The classification of articles required by paragraph (a) of this section may be omitted from the rate tariff provided that it is published in its entirety in a separate classification tariff in accordance with §§ 221.100, 221.101, and 221.105.

(c) *Exceptions to governing classification ratings.* When the classification ratings are published in a separate classification tariff as provided under paragraph (b) of this section and it is found

A 215

EXHIBIT U--14 C.F.R., PAGES 277 TO 278 ANNEXED TO REPLY AFFIDAVIT OF STANLEY J. LEVY

(1) Is responsible for operational control; and

(2) Shall list each person authorized by it to exercise operational control in its operator's manual.

(b) The pilot in command and the director of operations are jointly responsible for the initiation, continuation, diversion, and termination of a flight in compliance with this chapter and the operations specifications. The director of operations may delegate the functions for the initiation, continuation, diversion, and termination of a flight but he may not delegate the responsibility for those functions.

(c) The director of operations is responsible for canceling, diverting, or delaying a flight if in his opinion or the opinion of the pilot in command the flight cannot operate or continue to operate safely as planned or released. The director of operations is responsible for assuring that each flight is monitored with respect to at least the following:

(1) Departure of the flight from the place of origin and arrival at the place of destination, including intermediate stops and any diversions therefrom.

(2) Maintenance and mechanical delays encountered at places of origin and destination and intermediate stops.

(3) Any known conditions that may adversely affect the safety of flight.

(d) Each pilot in command of an aircraft is, during flight time, in command of the aircraft and crew and is responsible for the safety of the passengers, crewmembers, cargo, and aircraft. The pilot in command has full control and authority in the operation of the aircraft, without limitation, over other crewmembers and their duties during flight time, whether or not he holds valid certificates authorizing him to perform the duties of those crewmembers.

(e) Each pilot in command of an aircraft is responsible for the preflight planning and the operation of the flight in compliance with this chapter and the operations specifications.

(f) No pilot may operate an aircraft in a careless or reckless manner, so as to endanger life or property.

§ 121.538 Aircraft security.

(a) For purposes of this section, "certificate holder" means an air carrier as defined in § 121.1(a) (1) or (2) and a commercial operator engaging in intrastate common carriage covered by § 121.7.

(b) Each certificate holder shall, before February 6, 1972, adopt and put into use a screening system, acceptable to the Administrator, that is designed to prevent or deter the carriage aboard its aircraft of any explosive or incendiary device or weapon in carryon baggage or on or about the persons of passengers, except as provided in § 121.585. Each certificate holder shall immediately adopt and put into use its security program prescribed in paragraph (c) of this section.

(c) Each certificate holder shall prepare in writing and submit for approval by the Administrator its security program including the screening system prescribed by paragraph (b) of this section, and showing the procedures, facilities, or a combination thereof, that it uses or intends to use to support that program and that are designed to—

(1) Prevent or deter unauthorized access to its aircraft;

(2) Assure that baggage is checked in by a responsible agent or representative of the certificate holder; and

(3) Prevent cargo and checked baggage from being loaded aboard its aircraft unless handled in accordance with the certificate holder's security procedures.

(d) Each certificate holder shall submit its security program to the Administrator. Each certificate holder that is operating before March 9, 1972, shall submit its program no later than May 8, 1972. Each certificate holder that obtains the issue of its certificate under this part after March 8, 1972, shall submit its program at least 60 days before the date of intended operations.

(e) Within 30 days after receipt of the program, the Administrator approves the program or notifies the certificate holder to modify the program to comply with the applicable requirements of this section. The certificate holder may petition the Administrator to reconsider the notice to modify. The petition must be filed with the Administrator within 30 days after the certificate holder receives the notice. Except in the case of an emergency requiring immediate action in the interest of safety, the filing of the petition stays the notice pending a decision by the Administrator.

(f) Each certificate holder shall maintain at least one complete copy of its approved security program at its principal business office, and shall make it

available for inspection upon request of the Administrator.

(g) The Administrator may amend any screening system or any security program approved under this section upon his own initiative if he determines that safety in air transportation and the public interest require the amendment, or upon application by the certificate holder if the Administrator determines that the same considerations allow the amendment.

(1) In the case of an amendment upon his own initative, the Administrator notifies the certificate holder, in writing, of the proposed amendment, fixing a reasonable period (but not less than 7 days) within which it may submit written information, views, and arguments on the amendment. After considering all relevant material, the Administrator notifies the certificate holder of any amendment adopted, or rescinds the notice. The amendment becomes effective not less than 30 days after the certificate holder receives the notice, unless it petitions the Administrator to reconsider the amendment in which case its effective date is stayed by the Administrator. If the Administrator finds that there is an emergency requiring immediate action with respect to safety in air transportation or in air commerce, in the case of a commercial operator that makes the procedure in this paragraph impracticable or contrary to the public interest, he may issue an amendment, effective without stay, on the date the certificate holder receives notice of it. In such a case, the Administrator incorporates the findings, and a brief statement of the reasons for it, in the notice of the amended screening system or security program to be adopted.

(2) An applicant must file its application for an amendment of a screening system or security program with the Administrator at least 15 days before the date it proposes for the amendment to become effective, unless a shorter period is allowed by the Administrator. Within 30 days after receiving from the Administrator a notice of refusal to approve the application for amendment, the applicant may petition the Administrator to reconsider the refusal to amend.

(h) Each certificate holder shall at all times maintain and carry out the screening system prescribed by paragraph (b) of this section and the security program approved under paragraph (c) of this section.

(i) When a certificate holder receives a bomb or air piracy threat considered to be against a particular aircraft or flight, the certificate holder shall take the following actions to determine whether any explosive or incendiary devices, or weapons are aboard the aircraft involved:

(1) Conduct a security inspection on the ground before the next flight of the aircraft or, if the aircraft is then in flight, immediately after its next landing.

(2) If the aircraft is being operated on the ground, advise the pilot in command to immediately submit the aircraft for a security inspection.

(3) If the aircraft is in flight, advise the pilot in command to take the emergency action he considers necessary under the circumstances, in accordance with § 121.557 or § 121.559, whichever is applicable.

(j) Upon receipt of information that an act or suspected act of aircraft piracy has been committed, a certificate holder shall immediately notify the Administrator.

[Amdt. 121-85, 37 F.R. 4905, Mar. 7, 1972, as amended by Amdt. 121-88, 37 F.R. 5254, Mar. 11, 1972; Amdt. 121-90, 37 F.R. 7151, Apr. 11, 1972]

§ 121.539 Operations notices.

Each certificate holder shall notify its appropriate operations personnel of each change in equipment and operating procedures, including each known change in the use of navigation aids, airports, air traffic control procedures and regulations, local airport traffic control rules, and known hazards to flight, including icing and other potentially hazardous meteorological conditions and irregularities in ground and navigation facilities.

§ 121.541 Operations schedules: domestic and flag air carriers.

In establishing flight operations schedules, each domestic and flag air carrier shall allow enough time for the proper servicing of aircraft at intermediate stops, and shall consider the prevailing winds en route and the cruising speed of the type of aircraft used. This cruising speed may not be more than that resulting from the specified cruising output of the engines.

§ 121.543 Flight crewmembers at controls.

Each required flight crewmember on flight deck duty shall remain at his sta-

Supplemental Affidavit of Edward M. O'Brien, in Opposition to Motion.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

SUPPLEMENTAL AFFIDAVIT IN OPPOSITION TO MOTION

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

EDWARD M. O'BRIEN, being duly sworn, deposes and says:

That he is an attorney admitted to practice before this Court and is associated with the firm of Bigham Englar Jones & Houston, attorneys for defendants herein, and as such, he is fully familiar with all the pleadings and proceedings heretofore had herein. He submits this supplemental affidavit, pursuant to permission of the Court, in opposition to the above plaintiffs' motion to strike, or for partial summary judgment in plaintiffs' favor, with respect to the Second Affirmative Defense pleaded in defendants' answer.

A.

1. On pages 7-9 of their Opposing Memorandum of Law defendants contended that since *practically* every airline carrier is a corporation (p. 8) and since it is axiomatic that such corporations can act only through its officers and employees, which the delegates and members of the Warsaw Convention obviously must have known; and since such corporations can only be held liable in negligence by

reason of the acts or omissions of such officers or employees which constitute such negligence, it seemed clear therefore, that common sense dictated that such officers and employees were necessarily included in any possible view or definition of "carrier", as that word is used in the Convention and that the limitation in Article 22(1) quite naturally applied to them also. Such was Professor Ambrosini's common sense approach to the matter (Defendants' Memorandum of Law, pp. 25-26).

2. Of course, defendants are aware that the word "carrier" can mean and include a natural (non-corporate) person; Mrs. Brier is one example of this (Plaintiffs' [Mr. Levy's] Reply Affidavit, Exh. "M", p. 192). Any individual truck owner or small airplane owner can, under an appropriate d/b/a name, operate or hold himself out as a "carrier" of goods or persons; and, if done on a regularly scheduled basis, can be a "common carrier" if he chooses. But that is not the type of "carrier" with which the Convention is concerned.

3. The "carrier" referred to by defendants (Defendants' Memorandum of Law, pp. 7-9) is the "carrier" referred to in the Warsaw Convention, i.e., those "carriers" who engage in "international transportation", Article 1(1), which is "any transportation in which, according to the *contract* made by the parties, . . ." Article 1(2), and which contract (ticket) complies with and contains the elements set forth in Article 3(1) of the Convention. With all due deference to Mrs. Brier and the other owner-operators "selected" in Plaintiffs' Exh. "M", the Civil Aeronautics Board does not consider any of them when it issues orders applicable to Warsaw Convention "carriers". Thus, for example, when the C.A.B. recently ordered the "carriers" subject to or concerned with the limitation provisions of the Warsaw Convention to revise

the liability limitations applicable to "international transportation" upwards from approximately $8,300 to $10,000 in order to take into account the devaluation of the dollar in terms of gold, the C.A.B. directed the application of this order to 114 United States scheduled, supplemental and air taxi carriers, of which only two *may* not be incorporated. See, 39 Federal Register, No. 7 (Jan. 10, 1974) pages 1526-1529, a copy of which is annexed hereto as Exhibit "K".

4. With one exception, none of the "carriers" underscored in Exhibit "M" of Plaintiffs' Reply Affidavit operates as a scheduled carrier, whereas all of the carriers listed in defendants' Exhibit "K", annexed hereto, are scheduled carriers. Moreover, it is relevant to inquire which of Mr. Levy's "carriers" have complied with Section 403 of the Federal Aviation Act, 49 U.S.C. § 1373(a), requiring that "Every air carrier . . . shall file with the [C.A.B.] . . . tariffs showing all rates, fares, and charges for air transportation between points served by it, . . ."? Which of them has complied with 14 C.F.R. § 221.3? Are they the type carriers defined in 14 C.F.R. § 221.4, i.e., one subject to Section 403, supra? If they are, have they complied with the provisions of Section 401 of the Act, 49 U.S.C. § 1371? If not, is it because none of them is an "air carrier", as that term is defined in subdivisions (3), (10) and (21) of Section 101 of the Federal Aviation Act, 49 U.S.C. § 1301? And, which of Mr. Levy's "selected carriers" are in compliance with 14 C.F.R. § 221.175 or issue tickets complying with Article 3 of the Warsaw Convention? Needless to say, not one of them is listed in the index to air carriers section of the current issue of the Official Airline Guide.

5. Plaintiffs would have the Court believe that because "international aviation was in its infancy" when Warsaw

was adopted in 1929 (Plaintiffs' Memorandum of Law, p. 3) many of the airlines were owned by a bunch of private "individuals" or "entrepreneurs" who, it might be inferred, were nothing more than irresponsible barnstormers. If that were true, such an individual would have had to be crazy to carry property and passengers in either domestic or international transportation without the protection that the corporate form provided, i.e., limited personal liability. The fact is most of today's large scheduled airlines, both domestic and foreign, began their corporate life well before the Warsaw Convention was adopted in 1929. For example:

> "The early history of United Air Lines is the story of the Nation's pioneer coast-to-coast mail route that was opened in 1920. It also is the story of fast-moving events in the world of *corporate* finance later that same decade." (Emphasis added.)

World Airline Record (Seventh Edition, 1972) page 468. That same publication shows that the corporate lives of the following airlines had their inceptions prior to 1929: American; Braniff; Delta; Eastern; Northwest; Pan American; T.W.A.; United; Western; Quantas; Sabena; Air France; KLM; Aeroflot; and BOAC. Other carriers, such as Continental, National and Northeast had their inceptions before the United States adhered to the Convention in 1934. While it is not disputed that international air transportation may have been in its infancy in the 1920's the ownership and operation of businesses as corporations were not new by any means. If there ever was a business that cried out for the limited personal liability the corporate form provided it was the carrying of passengers and property for hire.

6. It is indeed difficult to believe that the delegates and representatives of those Governments who attended the

1929 Conference at Warsaw, whose primary purpose was to establish a limit on the airlines' liability, would so eagerly seek to limit the liability of the corporations and, at the same time, refuse that limit to those officers and employees whose negligent acts imposed on the corporation the very liability which those delegates sought to limit. Nevertheless, this is what plaintiffs ask this Court to believe.

7. Plaintiffs' view defeats the very purpose the treaty was designed to accomplish. In one breath the air carrier is told that it will have the benefit of the limitation for the liability imposed on it by its negligent officers and employees, and, in the next breath the carrier is told that the liability of those very officers and employees will not be limited. The treaty thus becomes meaningless because of the impossible situation created in requiring the negligent officer or employee to pay a judgment which everyone knows he cannot pay. As a result of the obvious pressures, the carrier itself finds it necessary to pay such a judgment, either through its liability insurance coverage or because of an indemnity agreement, in order to continue in business. And since any liability imposed on an air carrier arising out of an airline accident must necessarily be due to some negligent act or omission of one or more of its own officers or employees (whether he be vice-president, mechanic, pilot, etc.) all the passengers' attorneys will need to do is to sue only such officer or employee, and establish his negligence (which would have to be done anyway to render the carrier liable), in order to avoid the Convention's limit. Is this the result intended by the Warsaw delegates?

8. This approach to defeating the Convention's limits is based solely on plaintiffs' literal and narrow reading of

the word "carrier", i.e., since the text of the Convention does not state in express language that an officer or employee of a "carrier" is entitled to the limit, their attorneys conclude that the limit is not therefore applicable to them. This is not the first time the attorneys for the within plaintiffs have attempted to avoid the Convention's limits with their artificial and literal view of this treaty. In *Block* v. *Air France* these same attorneys contended that since the word "charter" was not specifically mentioned in the treaty the Convention did not apply to a charter flight. The Court of Appeals for the Fifth Circuit rejected this narrow approach by saying that the terms of the Convention "should be applied broadly" 386 F.2d at 338. Notwithstanding the fact that the treaty contained no specific language applying its terms expressly to charter flights the Court held that it was the intent of the delegates not to exclude such flights from the Convention. A similar attempt to saddle this treaty with a literal reading was also rejected by the Second Circuit Court of Appeals in the famous *Lisi* v. *Alitalia* case, 380 F.2d 508. It is respectfully submitted that this Court should also reject plaintiffs' attorneys' similar and current attempts to rely on a literal reading of the treaty for its assertions.

B.

9. The weakness of plaintiffs' position was never more apparent than in its reply to defendants' position concerning Article 27 of the Convention. Article 27 in the original French text is as follows:

"Article 27

En cas de *décès* du débiteur, l'action en responsabilite, dans les limites prévues par law présente Con-

vention, s'exerce contre ses ayants droit." U.S. Treaty Series, No. 876, p. 8

The English version is as follows:

> "In the case of the *death* of the person liable, an action for damages lies in accordance with the terms of this convention against those legally representing his estate." *id,* p. 23 (Emphasis added.)

Defendants' position concerning this article is set forth in its Memorandum in Opposition, pp. 15-18. However, plaintiffs' reply to this is that Article 27 was intended to cover two contingencies only. The first involves the death of a person "who was himself the carrier"; the second was the "dissolution of a corporate carrier" (Plaintiffs' Memorandum of Law, p. 6). As to the first contingency the Court is respectfully referred to paragraphs 1 through 8 of this affidavit. As to the second contingency—the dissolution of a corporate carrier—the Court will note that in the French versions of Article 27 the word "death" is "deces".

Annexed hereto as Exhibit "L" is a copy of the pages covering the French definition of "deces", as set forth in Volume 3 of the ten volume *Grand Larousse Encyclopedia,* together with an English translation of this word. As the Court can see the word "death" in Article 27 of the Convention does not in any way pertain to the "dissolution" of a corporation. It is concerned only with the death of a natural person, as the text of the definition clearly shows. Since it is for all practical purposes inconceivable that an air "carrier", which is subject to the Warsaw Convention's provisions, would be a natural person (whether in 1976, 1934 or 1929), *supra,* and since the meaning of "décès" has nothing whatever to do with a corporation's dissolution, it appears clear that "the death of the person

liable'' in Article 27 can only mean one who is ''liable'' under the Convention. And since the Convention did not preclude a suit against an officer or employee of the carrier it can reasonably be assumed that Article 27 refers to, and is limited to an officer, employee or servant of the ''carrier'' since only they (in addition to the corporation-carrier itself) can be ''liable'' under the Convention.

C.

10. The Civil Aeronautics Board's Economic Regulation 14 C.F.R. § 221.38(j), which is quoted in full on pp. 31 and 32 of Defendants' Opposing Memorandum of Law, permits the air carrier to publish in its tariffs, unless it has agreed to a higher limit or elects to assume unlimited liability, a provision stating (1) whether it avails itself of the Warsaw limitation; (2) ''the applicability and effect of the Warsaw Convention''; and (3) ''the amount of the liability limit in dollars.'' T.W.A. has done just that: it has availed itself of the Warsaw limitation and set forth the amount of the limit in dollars in Rule 16(B)(1)(a) and (b) of the Tariff, and it has included a statement as to the *applicability and effect* of the Warsaw Convention, i.e., by applying the limit to its employees, servants, agents and representatives, in Rule 16(C)(12) of the Tariff. The Board's Regulation 221.38(j) authorized T.W.A. to include this provision in its tariffs and T.W.A. did so include it. Nothing alters the fact that in paragraph 6 of the ticket (Exhibit ''J'' to Neuman Affidavit in Opposition) the limit was applied to T.W.A.'s employees and servants and that this application was authorized by the duly filed tariff of T.W.A. (Exhibit ''A'' of Aime Affidavit in Opposition) and Section 221.38(j) of the C.A.B.'s Economic Regulations. Plaintiffs' attempt to play estoppel with numbers

should not be allowed, particularly in view of the C.A.B.'s prior approval of this standard I.A.T.A. ticket.

11. In 1969 the C.A.B. approved an agreement (Agreement CAB 20618-R4) concerning Resolution 275b, entitled "Passenger Ticket—Conditions of Contract" of the International Air Transport Association. A certified copy of said agreement is annexed hereto as Exhibit "M". As can be clearly seen Paragraph 6 of the Conditions of Contract in Exhibit "M" is identical to paragraph 6 of Exhibit "J" of the Neuman Affidavit. Thus, the C.A.B. consideration of the "Notice" and the "Conditions of Contract", including the application of the limitation of the Convention to T.W.A.'s agents, servants and representatives, not only shows that the C.A.B. has expressly reviewed the standard IATA contract of carriage and conditions of contract contained therein but that it has also issued its Order 69-2-65 approving same, as the certification on Exhibit "M" clearly shows. In fact, such approval extended beyond the carrier's own people to its "agents"; such agents need not be an officer, employee or servant of the carrier.

12. The only conclusion that can reasonably be drawn from this is that the C.A.B. has had the precise question of the liability of the officers and employees of the airlines under the Warsaw Convention before it and found nothing objectionable about the limits being applied to them pursuant to the ticket or tariff. Considering the C.A.B.'s expertise in passing on economic questions pertaining to air carriers and the fact that the ticket and tariff could have been rejected by the C.A.B. under its authority, 49 U.S.C. § 1373(a); 14 C.F.R. § 221.180, it appears clear that the within defendants are protected by the Warsaw limitation. And, under the well known rule of primary jurisdic-

tion of the Board it is respectfully suggested that this Court has no option but to accept the C.A.B.'s determination, at least until plaintiffs have exhausted the administrative remedies before the Board which are available to them.

WHEREFORE, it is respectfully requested that plaintiffs' motion be denied in all respects and that the Court grant summary judgment to defendants dismissing the complaint together with costs and disbursements of this action, and, in the alternative, that defendants' liability, if any, be limited to the actual damage sustained but in no event to exceed $75,000.00 for each decedent.

s/ EDWARD M. O'BRIEN
s/ EDWARD M. O'BRIEN

(Sworn to April 1, 1976.)

A 227

EXHIBIT K--39 FED. REG., NO. 7 (1/10/74) PAGES 1526 TO 1529 ANNEXED TO SUPPLEMENTAL AFFIDAVIT OF EDWARD M. O'BRIEN

Upon consideration of the proclamation and supporting data, and all comments received, I find the requested exemptions with respect to Idaho, and, consequently, with respect to that portion of Oregon which is located in the mountain time zone, are consistent with the objectives sought to be achieved by the Act.

The Act, however, clearly intends that a State such as Idaho or Oregon, which has portions situated in more than one time zone, should invoke the exemption provisions set forth in section 3(a) if it desires to be exempt from the advanced time established by that section. That requires State legislative enactment of an exemption applying to that portion of the State lying in the more easterly time zone.

In recognition of the fact that the State Legislature of Idaho will not convene until January 14, 1974, and that of Oregon will not convene until February 11, 1974, I find it necessary to the convenience of commerce and to avoid confusion within the two States, to grant temporary exemptions under section 3 (b) of the Act. These will permit sufficient time for consideration and action by the respective State Legislatures under section 3(a) of the Act. The exemption granted with respect to Idaho will expire at 2 a.m. mountain nonadvanced (standard) time Sunday, February 3, 1974. The exemption with respect to Oregon will expire at 2 a.m. mountain nonadvanced (standard) time Sunday, February 24, 1974, unless the Governor of the State of Oregon requests an earlier expiration date.

Because of the emergency nature of the Act; the Congressional intent that it be implemented quickly; the short period of time between its enactment December 15, 1973, and its taking effect January 6, 1974; and the short periods of time between the dates of the proclamations—December 28, 1973, and January 2, 1974—and January 6, 1974, I find that notice and public procedure on these actions are contrary to the public interest and that good cause exists for making them effective in fewer than 30 days after publication in the FEDERAL REGISTER. For these same reasons it has not been possible to assess the need for, and, if necessary, to prepare environmental impact statements on these actions. See section 102, National Environmental Policy Act of 1969 (January 1, 1970, Pub. Law 91-190, section 102, 83 Stat. 853; 42 U.S.C. 4332).

This action is taken pursuant to section 3(b) of the Emergency Daylight Saving Time Energy Conservation Act of 1973 (December 15, 1973, Pub. Law 93-182, section 3(b), 87 Stat. 708); Executive Order 11751 (38 FR 34725); and Part 73 of the Regulations of the Office of the Secretary of Transportation (49 CFR Part 73).

Effective date. These actions are effective 2:00 a.m. mountain nonadvanced (standard) time Sunday, January 6, 1974.

Issued in Washington, D.C., on January 4, 1974.

CLAUDE S. BRINEGAR,
Secretary of Transportation.

[FR Doc.74-768 Filed 1-9-74;8:46 am]

CIVIL AERONAUTICS BOARD

[Docket 26274]

WARSAW CONVENTION LIABILITY LIMITATIONS

Order

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 3rd of January, 1974.

In the matter of Warsaw Convention liability limitations as expressed in U.S. dollars.

Section 221.38(j) of the Board's Regulations requires U.S. and foreign air carriers which avail themselves of the limits of liability to passengers provided in the Warsaw Convention (49 Stat. 3000; T.S. 876) to include in their tariffs, inter alia, a statement as to the amount of the liability limits of the Convention stated in dollars. These provisions of the tariffs, as well as those setting forth limitations of liability under the Convention with respect to baggage and property, restate the applicable law and serve to advise the public of the Convention limitations on their right of recovery for death, or injury or loss or damage to baggage and property.

The liability limits in the Warsaw Convention are set forth in terms of gold francs so that as long as the value of the dollar in terms of gold remained constant, no change was required in the dollar amount of the liability limits contained in the tariffs. However, by Order 72-6-7 adopted June 2, 1972, the Board directed the carriers to revise their tariffs to reflect the devaluation of the dollar in terms of gold from $35 per ounce to approximately $38 which took place effective May 8, 1972, and such revisions have been made. On September 21, 1973, Public Law 93-110 was enacted further devaluating the U.S. dollar to approximately $42.22 per ounce of gold effective October 16, 1972. As a result, the minimum liability limits specified in Order 72-6-7 and the tariffs currently on file with the Board no longer meet the minimum liability limits of the Convention and a revision of the tariffs is necessary to accurately reflect such limits in dollars.[1]

In view of the foregoing and of all other relevant matters the Board finds and concludes:

1. That the dollar limitations stated in the presently effective tariffs of the respondent air carriers and foreign air carriers no longer meet the minimum liability requirements of the Warsaw Convention for "international transportation" or of the Hague Protocol[2] and "international carriage" as defined therein.

2. That, in this circumstance, such tariff limitations are inconsistent with the applicable law as set forth in the Convention or the Protocol, and the tariff filing requirements in section 403 of the Federal Aviation Act of 1958, and Part 221 of the Board's regulations and they must be canceled.

3. That the minimum acceptable figures in United States dollars for liability limits applicable to "international transportation" and "international carriage" are as follows:

Convention and protocol minimum liability	Actual	Rounded[3]
125,000 francs (per passenger, Convention only)	$10,002.90	$10,000.00
250,000 francs (per passenger, Hague Protocol only)	20,005.80	20,000.00
5,000 francs (per passenger for unchecked baggage)	400.116	400.00
250 francs (per kilogram for checked baggage and goods)	20.00580	20.00
250 francs (per kilogram on a per-pound basis)	9.07460	9.07

[3] Article 22 of the Warsaw Convention permits the liability limits specified therein in gold francs to be converted into any national currency in round figures. The Board is permitting the round dollar amounts set forth in this order to be filed in the tariffs for purpose of convenience. This order is not intended to prohibit carriers from specifying the actual dollar equivalents in their tariffs as some of them do at the present time. The dollar values herein are calculated in accordance with the criteria detailed in Order 72-6-7.

Accordingly, pursuant to the provisions of the Federal Aviation Act of 1958, particularly sections 204(a), 403, and 1002 thereof,

It is ordered, That:

1. The carriers named in Appendix A, below, shall revise all liability limitations which may be applicable to "international transportation" or "international carriage" as defined in the Convention or the Protocol which are inconsistent with the dollar amounts set forth herein so as to conform with such amounts.

2. The tariff cancellations directed in ordering paragraph 1 above shall become effective on or before February 6, 1974, on not less than 10 days' notice.

3. That copies of this order shall be served on the air carriers and foreign air carriers named in Appendix A.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

[SEAL] EDWIN Z. HOLLAND,
Secretary.

[1] With respect to their liability to passengers, this order will affect only a small proportion of the U.S. and foreign air carriers. Most carriers engaged in international transportation by air involving journeys to or from the United States adhere to the Montreal Agreement (Agreement CAB 18900 approved by Order E-23680 dated May 13, 1966, 31 FR 7302) pursuant to which they have filed tariffs providing for a $75,000 limit of liability for death or injury to passengers. Since this limit is stated in terms of U.S. dollars, it is unaffected by the change in the gold value of the dollar.

[2] The Hague Protocol of 1955 doubles the Warsaw liability limit for passengers, but since the United States has not signed or adhered to the Protocol, its provisions do not normally apply with respect to air transportation.

A 228

Exhibit K Annexed to Supplemental Affidavit of Edward M. O'Brien

APPENDIX A

U.S. CERTIFICATED SCHEDULED AIR CARRIERS

Airlift International, Inc.
Alaska Airlines, Inc.
Allegheny Airlines, Inc.
Aloha Airlines, Inc.
American Airlines, Inc.
Aspen Airways, Inc.
Braniff Airways, Inc.
Chicago Helicopter Airways, Inc.
Continental Air Lines, Inc.
Delta Air Lines, Inc.
Eastern Air Lines, Inc.
Frontier Airlines, Inc.
Hawaiian Airlines, Inc.
Hughes Air Corp., d/b/a Hughes Airwest.
Kodiak-Western Alaska Airlines, Inc.
Los Angeles Airways, Inc.
National Airlines, Inc.
New York Airways, Inc.
North Central Airlines, Inc.
Northwest Airlines, Inc.
Ozark Air Lines, Inc.
Pan American World Airways, Inc.
Piedmont Aviation, Inc.
Reeve Aleutian Airways, Inc.
SFO Helicopter Airlines, Inc.
Seaboard World Airlines, Inc.
Southern Airways, Inc.
Texas International Airlines, Inc.
The Flying Tiger Line, Inc.
Trans World Airlines, Inc.
United Air Lines, Inc.
Western Air Lines, Inc.
Wien Air Alaska, Inc.
Wright Air Lines, Inc.

U.S. SUPPLEMENTAL AIR CARRIERS

Capitol International Airways, Inc.
Johnson Flying Service, Inc.
McCulloch International Airlines, Inc.
Modern Air Transport, Inc.
Overseas National Airways, Inc.
Royal International Airlines
Saturn Airways, Inc.
Southern Air Transport, Inc.
Standard Airways, Inc.
Trans International Airlines, Inc.
Universal Airlines, Inc.
World Airways, Inc.

U.S. AIR TAXI OPERATORS [1]

Aeromech, Inc.
Air East, Inc.
Air Indies Corporation.
Air New England, Inc.
Air North, Inc.
Air South, Inc.
Air Wisconsin, Inc.
Alaska Aeronautical Industries, Inc.
Altair Airlines, Inc.
Antilles Air Boats, Inc.
Apache Airlines, Inc.
Apollo Aviation, Inc.
Atlantic City Airlines, Inc.
Bar Harbor Airways, Inc.
Cascade Airways, Inc.
Cochise Airlines, Inc.
Combs Airways, Inc.
Command Airways, Inc.
Commuter Airlines, Inc.
Crown Airways, Inc.
Downeast Airlines, Inc.
Execuair, Inc.
Executive Airlines, Inc.
Fischer Bros. Aviation, Inc.
Florida Airlines, Inc.
Golden West Airlines, Inc.
Henson Aviation, Inc.
Mackey International Air Commuter.
Marco Island Airways, Inc.
Metroflight Airlines, Inc. d/b/a Houston Metro Airlines.
Midstate Air Commuter.
Monmouth Airlines, Inc.
Pennsylvania Commuter Airlines, Div. of Clark Aviation Corp.
Pocono Airlines, Inc.
Provincetown-Boston Airline, Inc. d/b/a Provincetown-Boston Airline or Naples Airlines.
Puerto Rico International Airlines, Inc.
Ransome Air, Inc.
Rio Airways, Inc.
Royale Airlines, Inc.
Sedalia-Marshall Boonville Stag Line, Inc.
Shawnee Airlines, Inc.
L. B. Smith.
Southeast Airlines, Inc.
Suburban Airlines, Inc. a subsidiary of Reading Aviation Service, Inc.
Swift Air Lines, Inc.
Travel Air Aviation, Inc.
Vercoa Air Service, Inc.
Winnepesaukee Aviation, Inc.

U.S. INDIRECT AIR CARRIERS

(Airfreight Forwarders and Air Express)

Add Airfreight Corp.
Aero Special Air Freight, Inc.
Air Cargo Expediters, Inc.
Air Cargo Specialists, Inc.
Air Freightways Corporation.
Air-Land Freight Consolidators, Inc.
Air-Land Transport, Inc.
Air Overseas Corporation.
Airport Packers, Inc. d/b/a Airport Packers & Forwarders.
Air Progress, Inc.
Air-Sea Forwarders, Inc.
Air Van Lines, Inc.
Airborne Freight Corporation (a Delaware corporation).
The "AL" Naish Moving and Storage Company, a Corporation.
Alas Ibero Americanas, Inc.
Alberti Van & Storage Co., Inc. d/b/a Mov Air.
All-Airtransport, Inc.
All Carrier Transport d/b/a ACT Air Freight.
All Hawaii Cargo Consolidators, Inc. d/b/a A-One Air Freight.
Allied Van Lines, Inc.
Allstates Air Cargo, Inc.
Ambassador Air Freight Corp.
Amerford International Corp., d/b/a Amerford Air Cargo.
American Ensign Van Service, Inc.
American Red Ball Transit Co., Inc.
American Van & Storage, Inc.
Amerpole Air Freight, Inc.
Anthony H. Osterkamp, Jr. d/b/a Osterkamp Trucking.
Apex Air Freight, Inc.
Apollo Air Freight Corporation.
Armand J. Donati.
Around the World Air Freight, Inc.
Anthony S. Arrico and Robert P. Landy d/b/a R. I. Air Freight Forwarders.
Associated Air Freight, Inc. (a Virginia corporation).
Aero Mayflower Transit Company, Inc.
Astro Air Express, Inc.
Astron Forwarding Company, Inc.
Atlas Van Lines International Corp.
Aztec Transportation Co., Inc., d/b/a Aztec Air Freight.
B & G Trucking, Inc.
Bader Bros. Van Lines, Inc.
Baker International Warehouse, Inc., d/b/a Baker Air Cargo
Beacon Shipping Co., Inc.
Behring International, Inc.
Bekins International Lines, Inc.
Bellair Expediting Service, Inc.
Ben-Lee Motor Service Co., d/b/a Mitchell Air Dispatch.
Bennett & Taylor Trans., Inc.
J. E. Bernard & Co., Inc. (a New York corporation).
Black & Geddes, Inc.
Bor-Air Freight Co., Inc.
Philip C. Borden, d/b/a Borden Trucking.
Brake Air Freight, Inc.
Bruce Transfer Corp.
Burlington Northern Air Freight, Inc.
A. F. Burstrom & Sons, Inc.
W. J. Byrnes and Company of New York, Inc.
cAir Freight, Inc.
C&L Freight Lines, Inc., d/b/a Commerce Air Freight.
C-M-D Transport, Inc., d/b/a C-M-D Air Forwarders.
Cal-Air Forwarders, Inc.
Cal-Hawaiian Freight, Inc.
California Delivery Service (a Corp.).
Cargo Courier Air Freight, Inc.
Cargoair Forwarders, Inc.
Carmichael International Service, d/b/a CIS Oceanair Services.
Carolina Freight Carriers Corporation.
Willis L. Carr and Charles D. Weist, d/b/a Cates Carr Co.
Cartwright International Van Lines, Inc.
Castelazo & Associates.
Century Air Freight, Inc.
CF Air Freight, Inc.
Christman Corporation, d/b/a Christman Air Freight.
Circle Airfreight Corp.
Clipper Express Company, d/b/a "Sky Hoi" Air Freight Division.
Columbia Air/Prate, Inc.
Columbia Export Packers, Inc.
Com-Air Freight, Inc., d/b/a Comet Air Freight.
Commercial Air-Prate, Inc.
Common Market Forwarders, Inc.
Connecticut Air Freight, Inc.
Continental Forwarders, Inc. (a Delaware corporation).
Corsair Air Cargo System, Inc.
F. X. Coughlin Co.
Crown Air Freight Corp.
D.J.C. Corporation, d/b/a Jones Air Freight.
Data Air Distribution System Co., Inc.
Davidson Forwarding Company.
Dean Forwarding Co., Inc.
Delcher Intercontinental Moving Service, Inc.
Woodrow W. De Witt, d/b/a De Witt Freight Forwarding.
Distribution Centers, Inc., d/b/a Alpha Air Freight.
District Moving & Storage, Inc., d/b/a District Containerized Express.
Domestic Air Express, Inc.
Door to Door International, Inc.
Frank P. Dow Co., Inc. (a Washington corporation).
Bruce Duncan Co., Inc., d/b/a Bruce Duncan Cargo.
Emery Air Freight Corporation.
Empire Carriers Corp., d/b/a Entico Air Freight Service.
Empire Foreign Air Forwarders, Inc.
Engel Brothers, Inc.
Enterprise Shipping Corp.
Equine Express, Inc.
Euro-American Air Freight Forwarding Co., Inc.
Express Forwarding and Storage Co., Inc.
5 Star Air Freight Corporation.
Fernstrom Storage and Van Company.
Flying Horse Air Freight, Inc.
Footner and Company, Inc., d/b/a Rennie Footner Air Express Service.
Foreign Trade Export Packing Corp., d/b/a Foreign Trade Export Company.
44 Air Express Systems, Inc.
Fort Pitt Consolidators, Inc.
Forwardair, Inc.
Four Winds Forwarding, Inc.
The Francesco Parisi Forwarding Corporation d/b/a Parisi Airfreight.
Fresh Air, Inc., d/b/a Fresh Air Cargo.

[1] Includes only air taxi operators participating in tariffs for through rates, fares, and charges filed jointly with certificated air carriers.

Fritz Air Freight.
Frontier Freight Forwarders, Inc., d/b/a Frontier Freight Consolidators.
Furman Air Freight Corp.
G. & H. Transportation, Inc., d/b/a G. & H. Air Freight.
Gateway Aviation Co., Inc.
General Air Freight Corp.—Domestic.
General Air Freight Corp.
General Transpac System, d/b/a GTS Airfreight.
Genex Airfreight, Inc.
Gilbert Air Transport Corp.
Global Forwarding, Inc.
Globe Shipping Co., Inc.
Gold Wings Ltd.
Golden Gate Air Freight, Inc.
Graf Air Freight, Inc.
Arnold S. Grant, d/b/a LeMark Air Freight Service.
Greene Air International, Inc.
HC & D Forwarders International, Inc.
Hallmark Cargo Services, Inc.
Hall Expediting, Inc.
Harle Consolidators International (HARLECON), A division of Harle Services, Inc.
Harlo-Air Cargo Brokers, Inc.
Hemisphere Air Freight, Inc.
Home-Pack Transport, Inc.
Hop Air Freight Forwarders, Inc.
I & T Air Freight Forwarders, Inc.
Imperial Air Freight Service, Inc. (a New Jersey corporation).
Imperial Van Lines International, Inc.
Industrial Air Cargo, Inc.
Inter-Maritime Forwarding Co., Inc.
International Air Courier, Inc.
International Customs Service, Inc.
International Export Packers, Inc.
Interstate Dress Carriers, Inc.
Intra-Mar Shipping Corporation.
Jet Air Freight.
Jet Forwarding, Inc.
Joyce Expediting Service, Inc.
Karevan, Inc.
Karr, Ellis & Co., Inc.
Kerner Trucking Service, Inc., d/b/a KTS Air Freight.
Key Air Freight, Inc.
Kimberlin Air Freight Corp.
King Van Lines, Inc.
Bernard Klainberg, d/b/a Berklay Air Services Corp.
L.T.C. Air Cargo, Inc.
La Belle Air Freight, Inc.
Landair Corporation.
Richard Thomas Light, d/b/a Westchester Air Freight.
Loomis Courier Service, Inc.
Luigi Serra, Inc.
John J. McCabe Agency, Inc.
McLean Cargo Specialists, Inc.
Maris Van & Storage, d/b/a Maris Air Transport Division.
Mark IV Air Freight, Inc.
Mercury Motor Express, Inc. (Mercury).
New England Air Lift, Inc.
Herb B. Meyer & Co., Inc.
Midland Forwarding Corporation, d/b/a ABC Air Freight.
Missouri Pacific Air Freight, Inc.
Monumental-Security Storage Co.
Murray Air Freight, Inc.
Murty Bros. Agency, Inc.
Mustang Trucking Company, Inc., d/b/a Mustang Air Freight.
National Movers Co., Inc.
National Van Lines, Inc.
Nelsonair International, Inc.
Neptune World-Wide Moving, Inc.
Network Courier Service.
Alex Nichols Agency, Inc.
North American Van Lines, Inc.
Northern Air Freight, Inc.
Novo Airfreight Corp.
Novo International Corp. d/b/a Novo International Airfreight.
O.N.C. Forwarding d/b/a Rocor Air Freight.
Oceanic Forwarders Company, d/b/a Air-Oceanic Shippers.
H. G. Ollendorff, Inc.
P.I.E. Air Freight Forwarding, Inc.
Pacific Alaska Forwarders Inc., d/b/a Artic Air Freight.
Pacific Delivery System.
Panalpina Airfreight, Inc., d/b/a Panalpina Airfreight System.
Par Avion Corporation.
Paulssen & Guice, Ltd.
Performance by Air, Inc.
Petry & Co.'s Foreign Express (a Division Trans-World Shipping Corporation).
Philadelphia Air Consolidators Assn., Inc.
Pilot Air Freight Corp.
Presto Delivery Service, Inc.
Prideair Freight, Ltd.
Priority Air Freight, Inc.
Profit by Air, Inc.
Pegasus Air Transport Co.
Perfect Pak Company.
Puerto Rican Forwarding Company, d/b/a Active Air Freight.
Qwikway Trucking Co., d/b/a Qwik Air.
Railway Express Agency, Incorporated.
Ramar Air Freight Corp.
[illegible] International Ltd.
[illegible]r Freight.
[illegible] Expediting Service, Inc.
Republic Airmodal, Inc.
Republic Van and Storage Co., Inc.
Rex Air Freight, Inc.
Right-O-Way, Inc., d/b/a Right-O-Way Air Freight.
Royal Air Freight Corp.
Rozay's Transfer.
Saber Air Freight, Inc.
Santa Fe Air Freight Company.
Satellite Air Freight, Inc.
Satin Air Freight, Inc.
Robert L. Schley, d/b/a Schley Shipping Company.
Schreiber Air Freight, Inc.
Seariders, Inc.
Security Van Lines, Inc.
Senderez Cargo Company, Inc.
Sentry Air Freight Corp.
Service By Air Freight Forwarders, Inc.
Service Air Cargo.
Sesko International, Inc.
Set Air Freight, Inc.
Shulman Air Freight, Inc.
Signalair, Inc.
Sincro Inter National.
Sky-Hawk Forwarders, Inc.
Skyline Air Freight, Inc.
Skymaster, Inc.
J. D. Smith Inter-Ocean, Inc.
Southern Pacific Air Freight, Inc.
Star World Wide Forwarders, Inc.
Starck Van Lines, Inc.
Suarez Shipping Services, Inc.
Suddath Van Lines, Inc.
Sunpak Movers, Inc.
Superior Fast Freight, d/b/a Aero-Ex.
Supreme Air Freight Corp.
Surf-Air, Inc.
H. E. Sutton Forwarding Co., Inc.
Swift Home-Wrap, Inc.
T.F.C. Air Freight, Inc.
Tally's Truck Line.
Target Air Freight, Inc.
Three-B Freight Service, Inc.
Towne International Forwarding Inc.
Trans-Air Freight System, Inc.
Transcon Lines.
Transport Express Inc.
Transpor Trade Corporation.
Trans-Pacific Air Cargo.
Tuya International Corp.
United News Transportation Co.
United Parcel Service Co.
United Van Lines, Inc.
U.S. Van Lines, Inc.
Usair Freight, Inc.
Vanpac Carriers, Inc.
Ven-Air Service Inc.
Virgil's Delivery Service, Inc., d/b/a Virgil's Air Cargo.
Von Der Ahe Van Lines, Inc.
B. Von Paris & Sons, Inc.
WTC Air Freight.
WTC Forwarding Corp.
Benjamin H. Walder & Rubin Konlon, d/b/a Chicagoland Air Freight.
Wallkill Air Freight Corporation d/b/a Atlas Air Cargo.
Wells Fargo Air Express, Inc.
Wheaton Van Lines, Inc.
James G. Wiley Co.
Wilson Air Freight Inc.
Wings and Wheels Express, Inc.
Wits, Inc., d/b/a Wits Air Freight.
World Trade Air Freight Services, Inc.
Wright Air Freight Corp.
W. R. Zanes & Co of La. Inc., d/b/a Zanes Inter-Air Consolidators.
Wings and Wheels Express, Inc., d/b/a Air Express International.

FOREIGN INDIRECT AIR CARRIERS

Willy Peter Daetwyler d/b/a Interamerican Airfreight Co.
Kinki Nippon Routist Co. (Japan) d/b/a Kintetsu World Express, Inc. (U.S.A.).
Kuehne & Nagel (Germany) d/b/a Kuehne & Nagel Air Freight, Inc.
Lep Transport, Ltd. (United Kingdom) d/b/a Lep Transport, Inc. (U.S.A.).
McGregor Swire Air Services Limited, Inc. (U.K.).
Mitsui Air & Sea Service Co., Ltd. (Japan) d/b/a Mitsuiline Travel Service of America, Inc. (U.S.A.).
Nippon Express Co., Ltd.
Pandair Freight Limited (U.K.)
Union Spedition—Gesellschaft m.b.H. Union Air Transport.
Yusen Air & Sea Service Company Limited (Japan) d/b/a Yusen Air & Sea Service (U.S.A.) Incorporated.

FOREIGN AIR CARRIERS[1]

Adastra Aviation Limited.
Aden Airways Limited.
Aer Lingus Teoranta.
Aerlinte Eireann Teoranta.
Aereo Fletes Internacionales, S.A. (AFISA).
Aero Lineas Flecha Austral Limitada.
Aero Spacelines, Inc.
Aero Trades (Western) Ltd.
Aerocosta, S.A.
Aerolineas Argentinas.
Aerolineas El Salvador, S.A.
Aerolineas Nacionales Del Ecuador, S.A.
Aerolineas Peruanas S.A.
Aerolinee Itavia—S.p.A.
Aeromar C. por A.
Aeronaves de Mexico, S.A.
Aeronaves del Ecuador, S.A.
Aeronaves del Peru, S.A.
Aerotransportes Entre Rios S.R.L.
Aerovias Colombianas Limitada (ARCA).
Aerovias Condor de Colombia Ltda.
Aerovias Lansa, S. de R.L.
Aerovias Nacionales de Colombia, S.A.
Aerovias Quisqueyana, C. por A.
Aerovias Venezolanas, S.A.
Air Afrique.
Air BVI Limited.
Air Canada.
Air Ceylon, Limited.
Air Haiti, S.A.
Air-India.
Air Jamaica (1968) Limited.
Air Liban (Lignes Aeriennes Libanaises).
Air Malawi Limited.
Air Nauru.
Air New Zealand Limited.
Air Rhodesia Corporation.

[1] Includes carriers by air of foreign countries which do not operate to/from the United States, but participates in joint tariffs in air transportation.

A 230

Exhibit K Annexed to Supplemental Affidavit of Edward M. O'Brien

AIR-SIAM Air Company Limited.
AIR-VIETNAM.
Air Zaire.
Airlines Jersey Limited T/A. British United C.I. Airways.
Alia-The Royal Jordanian Airlines Corporation.
Alitalia-Linee Aeree Italiane-S.p.A.
All Nippon Airways Company, Ltd.
ALM Dutch Antillean Airlines.
Ansett—A.N.A. (A division of Ansette Transport Industries (Operations) Pty. Ltd.).
Argo, S.A.
Ariana Afghan Airlines Co., Ltd.
Australian National Airlines Commission, Trading as Trans-Australia Airlines.
Austrian Airlines, Österreichische Luftverkehrs—Aktiengesellschaft.
Aviacion y Comercio, S.A.
B.K.S. Air Transport Limited.
Bahamas Airways Limited.
Balair AG.
Belairco Aviation Inc. (Doing business as Bellingham-Seattle Airways).
Britannia Airways Limited.
British Caledonian Airways, Limited.
British European Airways Corporation.
British Midland Airways Limited.
British Overseas Airways Corporation.
British United Airways Limited.
British West Indian Airways Limited.
BEA Airtours Limited.
Cambrian Airways Limited.
Canadian Pacific Airlines, Limited.
Canadian Voyageur Airlines Limited.
Caraibische Lucht Transport Maatschappij, N.V. (Caribbean Air Transport Company, Inc.).
Caribwest Airways Limited.
Cathay Pacific Airways, Limited.
Cayman Airways Limited.
Central African Airways Corporation.
Central African Airways Limited.
Ceskoslovenske Aerolinie.
Channel Airways Limited.
China Airlines, Ltd.
Civil Air Transport Company Limited.
Collingwood Air Services Limited.
Compagnie Nationale Air France.
Compagnie Nationale de Transports Aeriens (Royal Air Maroc).
Commuter Air Services Ltd.
Compania de Aviacion Faucett, S.A.
Compania de Dominicana de Aviacion, C. por A.
Compania Ecuatoriana de Aviacion, S.A.
Compania Internacional Aerea S.A. (CIASA).
Compania Mexicana de Aviacion, S.A.
Compania Panamena de Aviacion, S.A.
[illegible]mania Peruana Internacional de Aviacion [illegible].
[illegible]r Ltd.
[illegible]or Flugdienst G.m.b.H.
[illegible] Canada Flights Ltd.
[illegible]s Airways Limited.
Deutsche Lufthansa Aktiengesellschaft (also operating as Lufthansa German Airlines).
D.T.A.—Linhas Aereas de Angola.
Donaldson Line (Air Services) Limited d/b/a Donaldson International Airways.
East African Airways Corporation.
Eastern Provincial Airways, (1963) Limited.
Egypt Air.
El Al Israel Airlines Limited.
Emerald Airways Ltd.
Ethiopian Air Lines, Inc.
Fiji Airways Limited.
Finnair Oy.
Flugfelag Islands, H.F. (Icelandic Airways Ltd.).
General Department of International Air Services (Aeroflot, "Soviet Airlines").
Germanair Bedarfsluftfahrt Gesellschaft m.b.H. & Co. KG.
Ghana Airways Corporation.
Gibraltar Airways Limited.
Graveshurst Aviation Limited.
Great Lakes Airlines Limited.
Gulf Aviation Company, Limited.
Guyana Airways Corporation.
P. N. Garuda Indonesian Airways.
Flightexec Limited.
Empresa Guatemalteca de Aviacion.
Harrison Airways Limited.
Holland-American Lijn, n.v. (Netherlands). (Holland America Line).
Iberia, Lineas Aereas de Espana, S.A.
Indian Airlines Corporation.
Inex Adria Airways.
Internacional de Aviacion, S.A. (INAIR).
International Jet Air Ltd.
Iran National Airlines Corporation.
Iraqi Airways.
Japan Air Lines Company, Ltd.
Jugoslovenski Aerotransport (JAT).
Kar-Air OY.
K.L.M. Royal Dutch Airlines.
Korean Air Lines Co., Ltd.
Korea Air Terminal Service Co., Ltd. (Republic of Korea).
Kuoni Travel, Inc. (Kuoni Travel Limited (Switzerland) d/b/a).
Laker Airways Limited.
Lansa, S. de R.L.
Lebanese International Airways.
Leeward Air Transport Services Limited.
Leeward Islands Air Transport Services Limited.
Linea Aerea Nationale—Chile (LAN).
Linea Aeroposal Venezolana
Lineas Aereas Costarricenses, S.A.
Lineas Aereas de Nicaragua, S.A.
Lloyd Aereo Boliviano, S.A.
Loftleidir H.F. Icelandic Airlines Ltd.
Luftverkehrsunternehmen Atlantis A.G.
LUXAIR—Societe Annonyme Luxembourgeoise de Navigation Aerienne.
Malayan Airways Limited.
Malaysia-Singapore Airlines Limited.
MALEV—Hungarian Airlines.
Martin's Luchtvervoer Maatschappij N.V. (Martin's Air Charter Company).
Mackenzie Air Ltd.
Middle East Airlines Airliben S.A.L.
Middle East Airlines Company, S.A.
New Zealand National Airways Corporation.
Nigeria Airways, Ltd.
Nordair Ltee—Nordair Ltd.
North Canada Air Limited c.o.b. NORCANAIR
Olympic Airways S.A.
Out Island Airways Limited.
Pacific Western Airlines; Ltd.
Pakistan International Airlines Corporation.
Philippine Air Lines, Inc.
PLUNA, Primeras Lineas Uruguayas de Navegacion Aerea.
Polskie Linie Lotnicze "LOT."
Ontario Central Airlines Limited.
Orillia Air Services Limited.
Polynesian Airlines Limited.
Pomair N.V.
Qantas Airways Limited.
Quebecair.
Reseau Aerien Interinsulaire.
Royal Air Cambodge.
Royal Air Lao.
Saudi Arabian Airlines.
Scandinavian Airlines System.
Seagreen Air Transport Limited.
Servicio Aereo de Honduras, S.A.
Servicio Aereo de Transportes Commerciales (SATCO).
Servicios Aereos Cruzeiro Do Sul S.A.
Sociedad Aeronautica de Medellin Consolidada S.A. SAM.
Societe Anonyme Belge d'Exploitation de la Navigation Aerienne (SABENA) also operating as "SABENA Belgian World Airlines).
South African Airways.
Spantax, S.A.
Sudan Airways.
Superior Airways Limited.
Surinaamse Luchtvracht Onderneming N.V. (Surinam Air Cargo Corporation).
SWISSAIR, Swiss Air Transport Company Limited.
TACA International Airlines, S.A.
Tarom-Transporturile Aeriene Romine.
Thai Airways International Ltd.
Thos. Cook & Son Inc. (U.S.). (Thos. Cook & Son (Continental and Overseas), Ltd. (Great Britain) d/b/a).
Trans-Australia Airlines.
Trans Caribbean Airways.
Trans-Mediterranean Airways S.A.L.
Transair Limited.
Transavia, N.V.
Transmeridian Air Cargo Limited.
Transportation Corporation of America.
Transporte Aereo Rioplatense, S.A.C.E.I.
Transportes Aereos Benianos, S.A.
Transportes Aereos de Cargo, S.A. (Transcarga).
Transportes Aereos Nacionales, S.A.
Transportes Aereos Portugueses, S.A.R.L.
Turk Hava Yollari Anonim Sirketi.
Turks and Caicos Air Services, Ltd.
Union de Transports Aeriens (U.T.A.).
Union of Burma Airways Board.
"VARIG", S.A. (Viacao Aerea Rio-Grandense).
Venezolana Internacional de Aviacion, S.A. (VIASA).
Viacao Aerea Sao Paulo, S/A "VASP".
Wagner Aviation Limited.
Wardair Canada Ltd.
Windward Islands Airways International N.V.

[FR Doc.74-779 Filed 1-9-74;8:45 am]

[Docket 25595; Agreement CAB 23989]

AMERICAN AIRLINES, INC., ET AL.

Approval of Capacity Reduction in Chicago-Los Angeles Market

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 3rd day of January 1974.

By joint application American Airlines, Inc. (American), Continental Air Lines, Inc. (Continental), Trans World Airlines, Inc. (TWA), and United Air Lines, Inc. (United) request approval pursuant to section 412 of the Federal Aviation Act of 1958, as amended (the Act), of an agreement limiting capacity in the Chicago-Los Angeles market.[1] The agreement was negotiated at public sessions held in Washington, D.C. on August 23-24, 1973 and September 26, 1973 and was executed by the carriers on October 5, 1973.[2]

The agreement is by its terms subject to prior approval by the Board, and is to be implemented on January 15, 1974, if approval is obtained on or before November 26, 1973. If, however, such approval is not obtained until after November 26, 1973, the agreement will be implemented on the first day of the calendar month which occurs 40 or more days after approval. The agreement further provides for termination six months after the date of implementation, provided, however, that any party has the right to terminate the agreement at any time by giving at least 90 days' written notice to the other parties.

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[1] The agreement is limited to the Chicago-Los Angeles nonstop market and does not include Ontario.

[2] These discussions were conducted pursuant to the authorization granted in Order 73-7-21, July 6, 1973.

EXHIBIT L--VOL. GRAND LAROUSSE ENCYCLOPEDIA (DECES; TRANSLATION) ANNEXED TO SUPPLEMENTAL AFFIDAVIT OF EDWARD M. O'BRIEN

DÉCÈS

Death: n.m. (latin, decessus, departure, loss) death of a person (especially in administrative and legal language); to certify death; death certificate (syn."death").

Demogr. Encyclop. The determination of the cause of a death is often ambiguous. There may be concurrent causes or a type of death the cause of which is a previous event. The alcoholic who dies as a result of a fall due to his state of ebriety is an example of it. So the statistics of the causes of death hardly reach perfection. In France in 1955, 10 per cent of the causes were not declared or improperly declared; if we add 8 per cent of deaths placed under the rubric of senility, we find out that the precise cause of 1 death out of 5 is unknown. This proportion goes up 1 out of 2 in Corsica, Lozere or in Low-Alps.

One other source of uncertainty is due to the difficulty of introducing contributory causes in certain types of mortality. Alcoholism which is an aggravating factor of general french mortality, is registered as a proximate cause only a few times which does not reflect (even if we take in consideration deaths caused by cirrhosis of the liver) the loss of lives caused by the often excessive alcoholization of part of the population.

The diminution of mortality in the most developed

countries is a result of the progressive disappearance of deaths due to infectious causes (particularly the great epidemics: cholera, plague, smallpox) defeated by vaccination, hygiene, antibiotics, chemotherapy. The sole exogenous cause curbing this diminution is the mortality caused by accident (particularly car accident) which is steadily increasing.

The diseases of old age (endogenous mortality) - cancer, heart disease, circulatory disease - have a more and more predominant role in mortality.

Administrative Law: Proof of death is ascertained by an act written on the register of births, deaths and marriages at the city hall in which jurisdiction the death occurred.

The certificate death is submitted to the general rules enacted for the writing of birth, death and marriage certificates as also to some special rules. No inhumation can be done without a permission given by the person in charge of the register of births, deaths and marriages; in case of evidence of violent death this permission must be denied: a judiciary investigation is, then, necessary to determine the real causes of the death and to permit the prosecutor to deliver a permit of inhumation. The mayor must himself certify the death; practically this certification

is usually assigned to a doctor. The certificate of death is established after the statement of a blood relative or other informed person. Special formalities are required where decedent dies outside the parish in which he or she was domiciled, or dies in jail, or dies during a boat trip or in the army.

Where the certification of death is not possible by viewing the dead body, evidence of death is proved by a declaratory judgment of death; special statutes detail the procedure to be followed so as to certify the death.

Civil and Social Law: death insurance. It consists in the payment of the proceeds to the beneficiary designated by the assured in case of death of the assured; the amount of premiums vary according to the age of the assured and the amount assured; often even according to the state of health of the subscriber at the moment of the conclusion of the contract. Where the death risk is covered during the whole life of the assured, there is a "whole life policy"; where the death risk is covered only during the number of years ascertained in the contract there is a "temporary insurance"; with the "mixed insurance", the assured receives the subscribed proceeds if he is still alive at the end of the period forseen for the temporary insurance, whereas the proceed is paid to the heirs in case of death during that period.

Exhibit L Annexed to Supplemental Affidavit of Edward M. O'Brien

The "mandatory social policies" cover the death risk; the amount of death proceeds equals three times the monthly salary on the basis of which the assured contributed. Various special systems and other complementary provision systems (particularly the one which was promulgated in 1947 for white collar workers) cover the death risk under more advantageous conditions.

Exhibit L Annexed to Supplemental Affidavit of Edward M. O'Brien

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

RUTH ANN REED, as Administratrix of the Estate of DAN WILLIAM REED, deceased, and as parent, natural guardian and best friend of CYNTHIA ANN REED, DEBORA LYNN REED and JULIE MARIE REED, all infants, and

Eight Other Wrongful Death Claims,

Plaintiffs,

-against-

FORWOOD CLOUD WISER, JR., and RICHARD E. NEUMAN,

Defendants.

75 Civ. 4015 (MEF)

AFFIDAVIT

----------x

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

PHILIPPE LEGREZ, being duly sworn deposes and says:

That the undersigned is a citizen of France and is presently a resident of the City of New York.

That he has a Bachelor of Philosophy degree from the Sor Bonne, Paris, France, and a Master of Laws degree from L'Universte de Droit de Paris, and has been a member of the Bar of Paris since October, 1974.

That he is conversant with the English language

Exhibit L Annexed to Supplemental Affidavit of Edward M. O'Brien

and has been since 1965 and that in his legal employment in France he has on many occasions translated documents from English into French and from French into English.

That with the exception of the table relating to principal causes of death, which table has been omitted, the attached hereto is a true and accurate translation of the word "deces" as that word appears in the Grand Larousse Encyclopedique, endix Volumes, Tome Troisieme, Librairie Larousse, Paris (Vo. 3, Grand Larousse Encyclopedia, in Ten Volumes, Library Larousse, Paris).

Ph. Legrez

Philippe Legrez
Avocat a la Cour d'
Appel de Paris

Sworn to before me this
26th day of March 1976

James A. Gallagher Jr.

Notary Public, State of New York
No. 60-1003910 Qualified in Nassau Co.
Cert. Filed in New York County
Commission Expires March 30, 1977

A 237

EXHIBIT M--AGREEMENT CAB 20618-R4 RE PASSENGER TICKET CONDITIONS OF CONTRACT ANNEXED TO SUPPLEMENTAL AFFIDAVIT OF EDWARD M. O'BRIEN

WASHINGTON, D.C.

CIVIL AERONAUTICS BOARD

CERTIFICATION

HEREBY CERTIFY *that the annexed is a true copy of the* Agreement CAB 20618-R4, which agreement concerns IATA Resolution 275b entitled, "Passenger Ticket--Conditions of Contract," and which agreement was approved by the Civil Aeronautics Board as set forth in Order 69-2-65, dated February 13, 1969. According to the Board's records, the attached agreement has been continuously in effect from February 13, 1969 to date and was in effect on September 8, 1974, subject to the amendment identified as Agreement CAB 21954-R6, also attached, as set forth in Order 70-10-147, dated October 30, 1970,

on file with this Board.

IN WITNESS WHEREOF, *I have hereunto subscribed my name, and caused the seal of the Civil Aeronautics Board to be affixed this* 23rd *day of* January *one thousand nine hundred and* seventy-six.

Edward J. Holland

Secretary

CIVIL AERONAUTICS BOARD

...204(d) of th... Aviation Act (49 U.S.C. 1324(d)) provides in pertinent part that "[p]ublications purporting to be pub... the Board ... competent evidence of the orders, decisions, rules, regulations, and reports of the Board--in all cour... ...ational and ... --without further proof or authentication thereof"; and Section 1103(49 U.S.C. 1503) provides that do... ...and reports ... the Board shall be preserved as public records in the custody of the secretary of the Board, "shall b... ...d as prima fa... ...nce of what they purport to be--in all judicial proceedings", and that "copies of, and extracts from" s... ...ds "certified ... ecretary of the Board, under the seal of the Board, shall be received in evidence with like effect as the or...

GPO 882-529

PASSENGER TICKET - CONDITIONS OF CONTRACT
(Amending)

100(1st PTPC)275b
200(1st PTPC)275b
300(1st PTPC)275b

Expiry Date: Indefinite

Type: A

BEST COPY AVAILABLE

RESOLVED that Resolution 275b is amended to read:

RESOLVED that

(1) the "Notice" and the "Conditions of Contract" on the inside cover of the Passenger Ticket and Baggage Check used for interline international carriage reads as shown in Paragraph (2) below.

(a) the text of the "Notice" shall be printed in bold letters, 8 point size, preferably in Helvetia or similar large character letters and the text of the Conditions of Carriage in 6 point size of the same character.

(b) Paragraph 2 of the text of the Conditions of Contract shall be printed in bolder type than the other paragraphs thereof.

(2) that the titles and text of the Notice and Conditions of Contract are:

NOTICE

If the passenger's journey involves an ultimate destination or stop in a country other than the country of departure the Warsaw Convention may be applicable and the Convention governs and in most cases limits the liability of carriers for death or personal injury and in respect of loss of or damage to baggage. See also notice headed "Advice to International Passengers on Limitation of Liability".

CONDITIONS OF CONTRACT

1. As used in this contract "ticket" means this passenger ticket and baggage check, of which these conditions and the notices form part, "carriage" is equivalent to "transportation", "carrier" means all air carriers that carry or undertake to carry the passenger or his baggage hereunder or perform any other service incidental to such air carriage, "WARSAW CONVENTION" means the Convention for the Unification of Certain Rules Relating to International Carriage by Air signed at Warsaw, 12th October 1929, or that Convention as amended at The Hague, 28th September 1955, whichever may be applicable.

2. Carriage hereunder is subject to the rules and limitations relating to liability established by the Warsaw Convention unless such carriage is not "international carriage" as defined by said Convention.

3. To the extent not in conflict with the foregoing carriage and other services performed by each carrier are subject to: (i) provisions contained in this ticket, (ii) applicable tariffs, (iii) carrier's conditions of carriage and related regulations which are made part hereof (and are available on application at the offices of carrier), except in transportation between a place in the United States or Canada and any place outside thereof to which tariffs in force in those countries apply.

4. Carrier's name may be abbreviated in the ticket, the full name and its abbreviation being set forth in carrier's tariffs, conditions of carriage, regulations or timetables; carrier's address shall be the airport of departure shown opposite the first abbreviation of carrier's name in the ticket, the agreed stopping places are those places set forth in this ticket or as shown in carrier's timetables as scheduled stopping places on the passenger's route; carriage to be performed hereunder by several successive carriers is regarded as a single operation.

5. An air carrier issuing a ticket or checking baggage for carriage over the lines of another air carrier does so only as its agent.

6. Any exclusion or limitation of liability of carrier shall apply to and be for the benefit of agents, servants and representatives of carrier and any person whose aircraft is used by carrier for carriage and its agents, servants and representatives.

7. Checked baggage carried hereunder will be delivered to the bearer of the baggage check. In case of damage to baggage complaint must be made in writing to carrier forthwith after discovery of the damage and, at the latest, within 7 days from receipt and in case of delay, the complaint must be made within 21 days from the date the baggage was delivered.

8. This ticket is good for carriage for one year from date of issue, except as otherwise provided in this ticket, in carrier's tariffs, conditions of carriage, or related regulations. The fare for carriage hereunder is subject to change prior to commencement of carriage. Carrier may refuse transportation if the applicable fare has not been paid.

9. Carrier undertakes to use its best efforts to carry the passenger and baggage with reasonable dispatch. Times shown in timetables or elsewhere are not guaranteed and form no part of this contract. Carrier may without notice substitute alternate carriers or aircraft, and may alter or omit stopping places shown on the ticket in case of necessity. Schedules are subject to change without notice. Carrier assumes no responsibility for making connections.

10. Passenger shall comply with all Government travel requirements, present all exit, entry and other required documents and arrive at the airport by the time fixed by carrier or, if no time is fixed, early enough to complete departure procedures.

11. No agent, servant or representative of carrier has authority to alter, modify or waive any provision of this contract.

Exhibit M Annexed to Supplemental Affidavit of Edward M. O'Brien

(3) that notwithstanding anything contained in the effectiveness Resolution, this amendment shall be implemented at the next time of reprinting ticket stock, but in no event later than April 1, 1972.

(END)

Filing Period:

Intended Effectiveness Date:
1 November 1968

A 240

Exhibit M Annexed to Supplemental Affidavit of Edward M. O'Brien

APPENDIX "F"

R-5

21954 - R-6

F-8/25/70

70-10-147

10/30/70

PASSENGER TICKET -

CONDITIONS OF CONTRACT

AMENDING

Expiry Date: Indefinite

103(PTPC)275b
203(PTPC)275b
303(PTPC)275b

Type: A

RESOLVED, that Paragraph (1) preamble of Resolution 275b is amended to read:

(1) "that the 'Notice' and the 'Conditions of Contract' on the ~~inside cover of the~~ Passenger Ticket and Baggage Check used for interline international carriage reads as shown in Paragraph (2) below."

Filing Period:

August 11 - September 22, 1970

Effective Date

1 November 1970

Supplemental Affidavit of Stanley J. Levy, in Support of Motion.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

STANLEY J. LEVY, being duly sworn, deposes and says:

I am a member of the firm of Kreindler and Kreindler, attorneys for plaintiffs herein and am fully familiar with the pleadings and proceedings herein. I submit this affidavit, pursuant to permission granted by the Court, in response to defendants' "Supplemental Affidavit" and in support of plantiffs' motion to strike defendants' Second Affirmative Defense wherein they seek to extend to themselves the Warsaw Convention's limitation of liability.

A.

1. Defendants' final effort to persuade the Court to extend the Warsaw Convention damage limitation to employees is based upon the erroneous contention that United States' public policy favors the Warsaw Convention's limited liability regime. Presumably, defendants hope that if the Court finds a policy favoring the Warsaw limited liability regime, it will extend the limitation of liability to employees even though the language and history of the Convention do not justify such a broadening of coverage. However, the Warsaw Convention is contrary to public policy, the reason for its creation, —to protect the infant

airlines, no longer exists and the $9,000 Warsaw damage limitation, even supplemented by the carriers' "voluntary agreement" to pay $75,000, is still woefully inadequate and leaves most Americans grossly undercompensated.

The history of the proponents' many attempts to correct Warsaw's admitted problems demonstrates that Warsaw is contrary to American policy and harmful to the rights of American travellers. The entire damage limitation concept, and in particular the extremely low damage limitation, has been the source of continuing criticism which, on at least one occasion, led to the United States formally denouncing Warsaw. Despite the conceded inadequacies of Warsaw and the continuing efforts to correct the problems, not a single administration in the last 25 years has been willing to submit any Warsaw amendment to a Congressional vote realizing that the expected rejection would compel denunciation of the Convention.

2. The Convention's damage limitation is concededly inadequate. The recognition of the inadequacy explains why courts, in large death and personal injury cases, have found ways of evading the Warsaw limitation. *See Mertens* v. *Flying Tiger Line,* 341 F.2d 851 (2nd Cir. 1965) *cert. denied,* 382 U.S. 816 (1965); *Warren* v. *Flying Tiger Line,* 352 F.2d 494 (9th Cir. 1965); *Lisi* v. *Alitalia,* 370 F.2d 508 (2nd Cir. 1966), *aff'd by a divided court,* 390 U.S. 455 (1968).

3. Even if the Warsaw limitation was reasonable in 1929, it is generally agreed that the damage limitation is totally unreasonable today. The statistics on "The Purchasing Power of the Consumer Dollar" compiled by the Department of Labor (attached as Exhibit "V") show that the value of the dollar has fallen more than 68% since the Convention was adopted in 1929. According to the Labor Department figures, the dollar (using 1957-59 as $1.00 (de-

clined in value from $1.674 in 1929 to $0.88 in 1966, when the Montreal Agreement was adopted, to $0.535 in June of 1975. Even the $75,000 Montreal damage limitation has declined in value 31% since it was adopted in 1966.

4. Thus, it is clear that both the Warsaw and Montreal damage limitations operate to deny passengers full and fair recovery. Statistics recently compiled by the Civil Aeronautics Board [CAB] dealing with financial recovery for passenger deaths and serious injuries in aircraft accidents (attached as Exhibit "W") substantiate that passengers injured or killed in Warsaw flights inevitably receive far less than passengers injured in non-Warsaw flights and are generally grossly undercompensated by American standards. Table 1 of the 1975 CAB statistics shows, that in non-Warsaw death settlements in 1974, 100% of the survivors of those killed recovered in excess of the $9,000 Warsaw limit and 75.8% recovered in excess of the Montreal limit. The effects of inflation and higher verdicts are demonstrated by Table 1 which shows that in most categories the percentage of recoveries exceeding the stated amount increased between 1970 and 1974 and by Table 5 which shows that the average recovery in non-Warsaw passenger death cases increased 130% from $102,358 in 1968 to $233,210 in 1974. However, Warsaw passengers in the same period have been limited to a maximum recovery of $75,000 regardless of their actual loss.

5. The *Reed* case dramatically demonstrates how woefully inadequate the Warsaw damage limitation is and how it operates to deny survivors a fair recovery. At the time of Dr. Reed's death, he was 34 years of age and employed as a scientist-investigator at the Sloan Kettering Foundation with an annual salary of $19,323. His employer has stated he would be earning $30,000 by 1979. He is survived by his wife and three infant children, all of

whom were totally dependent on him for their support. Clearly the case has a value many times in excess of $75,000. Yet Warsaw would limit recovery to an arbitrary amount and deny his family the full and fair recovery they are entitled to under New York law (*Kilberg* v. *Northeast Airlines,* 9 N.Y.2d 34, 211 N.Y.S.2d 133 (1961)) and under federal admiralty law (*Moragne* v. *States Marine Lines, Inc.,* 398 U.S. 375 (1970); *Sea-Land Services, Inc.* v. *Gaudet,* 414 U.S. 573 (1974)).

6. The effect of Warsaw was not foreseen when the United States originally adhered to the Convention. The legislative history demonstrates that the Convention was adhered to in 1934 with virtually no Congressional examination. During the Congressional discussions in 1965 when Congress was considering the Hague Protocol, Senator Gore, who recognized that Warsaw "ran counter to all American legal concepts," attempted to review the Congressional history and debates concerning the ratification of Warsaw. He found that there were no reports, no documents and no debate. As a result of the complete lack of any analysis he concluded "that the Senate acted in 1934 in the most routine fashion on a matter deemed to be of no particular importance." 111 Cong. Rec. 17,882 (1965) (attached as Exhibit "X").

7. By 1955, it was generally recognized that the Warsaw damage limitation was totally unrealistic. Efforts to evade the Warsaw limitation by alleging inadequate ticketing or willful misconduct were being successfully advanced. In an attempt to make the Convention "unbreakable" and to correct "omissions" in the original treaty such as the failure to include the carrier's employees within the damage limitation, the airlines proposed certain amendments to the Warsaw Convention. The plan was to "correct" War-

saw by a Protocol since it was generally recognized that a new treaty with a damage limitation could not be ratified.

8. The Hague Protocol was signed in 1955. For ten years its sponsors refused to forward it to the Senate for the Senate's advice and consent. When Hague finally reached the Senate, the Administration included a proposed mandatory $50,000 insurance scheme because it was recognized that the Hague Protocol could not be passed with its $16,600 damage limitation. However, the proponents quickly discovered that neither the insurance plan nor Hague had any chance of passage. Indeed not only was there strong opposition to Hague but it quickly became clear there was strong support in Congress to denounce and withdraw from Warsaw.

Senator Yarborough, a member of the Foreign Relations Committee, condemned Warsaw as opposed to "American common law [whereby] a person injured by another's negligence can recover his full damages," supported the *New York Times* editorial which characterized Warsaw as "contrary to American principle and unfair in practice" and called for its denunciation. 111 Cong. Rec. 15,596 (1965) (attached as Exhibit "Y"). Senator Sam Ervin also called for withdrawal from Warsaw on the grounds that:

> "There is no justification whatsoever for denying to American travellers who are injured by the negligence of commercial airlines just recompense for their injuries or granting to commercial airlines special immunity and limitations from liabilities for negligence not enjoyed by any other commercial enterprise." 111 Cong. Rec. 16,716 (1965) (attached as Exhibit "Z")

Senator Robert Kennedy stated that what the Government should be seeking was "fair protection for the inter-

national air traveller," that Hague was not the solution and denunciation of Warsaw would present a better and fairer regime for travellers. 111 Cong. Rec. 20,165 (1965) (attached as Exhibit "AA"). Similarly, Senator Gore characterized Warsaw as contrary "to the whole system of American law . . .," stated that "it no longer properly serve[d] its intended purpose" and felt the Senate should vote on Hague since refusal to ratify Hague would encourage the Administration to denounce the Warsaw Convention. (Gore, *supra*, at 17,882-83).

In view of the clear indication that Hague would be defeated the Administration requested that the vote be postponed. The Congressional attitude toward Hague and Warsaw hardly showed a policy in favor of damage limitations or of the Warsaw Convention as defendants claim.

9. During its efforts to obtain support for Hague the Administration had promised to denounce Warsaw if the damage limitation was not increased. When it became clear Hague could not be ratified the Administration tried to obtain a voluntary concession from the airlines to increase the limit to $100,000. When the efforts failed, the Administration formally denounced the Warsaw Convention, the denunciation to become effective on May 15, 1966. Two days before the denunciation was to be effective, the international airlines "voluntarily" agreed to waive damage limitations up to a maximum of $75,000 and the Administration agreed to withdraw the denunciation. Twenty-nine Senators protested the Administration's plan to withdraw the denunciation without public hearings.

The Montreal Agreement is not a treaty; it is a special agreement by the airlines under Article 22(1) of the Warsaw Convention. There were no public hearings on the Montreal Agreement and it was never submitted for approval to the United States Senate. The Montreal Agree-

ment has been described by two of the United States Representatives who participated in events leading to its formulation as one that came about "almost overnight, and without normal constitutional and legislative processes . . . ." Lowenfeld and Mendelsohn, *The United States and The Warsaw Convention,* 80 Harv.L.Rev. 487, 601 (1967). In concluding their discussion of the Warsaw Convention, Lowenfeld and Mendelsohn stressed that the Montreal Agreement was to be an interim solution "to be tested, studied, revised, and eventually either abandoned or embodied in a new formal treaty." *Id.* at 602.

10. The Administration recognized that the $75,000 was inadequate and violated the rights of American passengers. Since it had said that Montreal was an "interim" measure it began efforts to raise the damage limitation in the hope of salvaging Warsaw. During the negotiations that followed the Administration stated, time and again, that its goal was to assure that any damage limitation would provide full recovery to at least 80% of Americans injured or killed. As a result of the first CAB study on death and personal injuries conducted in 1970 it became clear that a damage limitation of at least $300,000 was required. Despite this oft-stated policy the Administration agreed to sign the Guatemala Protocol in 1971 which contained a $100,000 damage limitation.

As with Hague, the drafters opted for a Protocol because they recognized that a new Warsaw-type scheme could not be successfully presented to the United States Congress. Like Hague, the Guatemala Protocol damage limitation was recognized to be so inadequate that it could not be presented to the Congress without some scheme to increase or supplement the damage limitation. Also like Hague, the Administration has been very reluctant to bring the matter to a vote and for five years has refused to submit Guatemala to the Senate for its advice and consent

Supplemental Affidavit of Stanley J. Levy.

11. There is no United States policy supporting any "principle of limited liability for international air carriers." Warsaw was ratified without consideration or analysis, as Senator Gore noted. No Amendment or Protocol supporting Warsaw has ever been favorably acted upon by the Congress. Moreover, since 1934, the following international treaties in addition to Hague and Guatemala have been drafted containing limitations on liability for personal injuries incurred in international air travel:

(a) Convention on Damage Caused by Foreign Aircraft to Third Parties on the Surface. 310 U.N.T.S. 181, (October 7, 1952);

(b) Convention, Supplementary to the Warsaw Convention, for the Unification of Certain Rules Relating to International Carriage By Air Performed by a Person Other Than the Contracting Carrier. 500 U.N.T.S. 31, (September 18, 1961).

The United States has neither adhered to nor ratified any of these treaties and no administration has been willing to bring any to a vote. History demonstrates that there is no policy favoring a "principle of limitation of liability in international transportation". Defendants' claim is totally unfounded.

12. In sum, the history of Warsaw is that of a Treaty adopted without any analysis or consideration by the Senate, that has no public support and that is contrary to established public policy. Much effort has been expended drafting amendments in order to correct Warsaw's admitted faults, but no administration has been willing to submit these protocols to a legislative vote. The conditions that led to Warsaw no longer exist. The Convention is outdated and does not serve the interest of the travelling public. The damage limitation is totally

inadequate and denies the American traveller the right to full and fair recovery. It is contrary to American law and violative of American public policy. In view of these factors, public policy dictates that the treaty be limited to its precise language and that any efforts to extend it to uncovered situations be rejected.

B.

13. Defendants continue to base their argument on the unsupported claim that the word "carrier" as used in the Convention applies only to a corporation. Indeed their entire Article 27 argument rests on this premise. However, as was pointed out previously, there is no language in the Convention itself, no legislative history and no authority to support defendants' claim that the drafters intended to have Warsaw apply only to corporate carriers.

14. Initially defendants argued that since virtually every domestic and foreign airline today is a corporation, the word "carrier" in the Warsaw Convention must refer only to a corporate entity. Defendants' Memorandum at pp. 8-9. Plaintiffs then pointed out that in the twenties and even today many private individuals function as "air carriers," enter into contracts of carriage, issue tickets and provide air transportation. We submitted only a few of the many pages from the World Aviation Directory to illustrate that individuals still functioned as air carriers. Historically it was clear that during the Warsaw period many small carriers were functioning and providing "international transportation," particularly in Europe with its more limited geographical boundaries. Plaintiffs' Reply Memorandum at pp. 4-5. Defendants now concede that the word "carrier" can include a natural (non-corporate) person . . .," but argue that this is "not the

type of 'carrier' with which the Convention is concerned." Defendants' Supplemental Affidavit at p. 2. No reason is given to explain why the language of the Treaty should not be given its usual meaning or why certain classes of carriers should be arbitrarily removed from the Convention. Significantly, they point to nothing in the Convention language and cite no history or authority to support their ill-founded claim.

15. Since they were unable to find any relevant support, defendants now attempt to base their claim on a 1974 CAB service list which itself contains at least two non-corporate carriers. However, the service list is only that —a service list. It was never intended to be and is not a list of all carriers who function as air carriers in the United States. It certainly is not a list of those who are "carriers" within the meaning of the Warsaw Convention. There is no question that the CAB was simply attempting to notify those carriers who had filed with it and was not attempting to list all Warsaw Convention "carriers".

16. As plaintiffs have noted, there are many air carriers operated as private individuals rather than as corporations. That was also true in 1929 when the airline industry was in its infancy. Defendants note that many of the present day giant airlines had incorporated prior to 1929. What defendants fail to point out is that many of today's major international carriers are the corporate survivors of intense competition that took place over many years and that these carriers took their present form by acquiring or merging with innumerable smaller individual and corporate carriers. For example, United Air Lines took its present form in part through the acquisition of numerous small carriers. MAYER, CORPORATE AND LEGAL HISTORY OF UNITED AIR LINES AND ITS PREDECESSORS AND

SUBSIDIARIES, 1925-1945 at 7-15 (1953). Among those smaller operators which eventually became part of United Air Lines was a company called Varney Air Lines, Inc. which was first incorporated in 1929 for the purpose of taking over the property, lucrative air mail route and good will of Walter T. Varney who had operated the route as an individual until the 1929 incorporation. *Id.* at 98-99.

17. The airline industry of the late 1920's bears as little resemblance to the airline industry of the mid-1970's as the aircraft they employed does to today's jet transports:

> "During the next few years [following Lindberg's 1927 flight], scores of airline companies were established. Some were precariously founded on the proverbial wing and a prayer, and such was the intensity of the boom that many of these won through more by luck than judgment on the tide of a joyful seller's market. Others were set up with vast financial backing, to become pillars of the industrial world. . . . Any person who owned an aeroplane could start a service without asking anybody's permission other than that of the owners of the land he wished to use. It was a wonderful period of opportunity for private enterprise." R.E.G. DAVIS, AIRLINES OF THE UNITED STATES SINCE 1914 at 57 (1972).

> "The growing enthusiasm for air travel was sustained long after the publicity of the Lindberg epic flight, and continued to flourish in spite of the advent of the greatest economic depression in United States history. Almost anyone with enough dollars to buy a second-hand aircraft capable of carrying a few passengers could still attract business." *Id.* at 147.

Thus, the history of aviation demonstrates that in the 1920 and 1930's when Warsaw was drafted and adhered

to, individual enterprises flourished and non-corporate carriers abounded.

18. The issue of whether a person is a "carrier" within the meaning of Warsaw does not depend on whether the person providing air transportation has filed a tariff with the United States Civil Aeronautics Board or been given a license by a governmental regulatory authority.* It depends on whether the carrier entered into a contract of carriage and provided air transportation. Similarly, the question of whether a ticket was issued has little significance. The Convention is quite explicit in providing that the failure to deliver a ticket does not affect the applicability of the Convention, but if an adequate ticket is not given, the carrier cannot avail himself of the limitation of liability. Article 3(2). *Lisi, supra; Mertens, supra; Warren, supra; Stevenson* v. *Sud Aviation, et al.,* Civil Nos. 49234 *et al.* (N.D.Cal., entered September 15, 1969) (attached as Exhibit "BB"); *Egan* v. *Kollsman Instrument Corp.,* 21 N.Y.2d 160, 297 N.Y.S.2d 14 (1967), *cert. denied,* 390 U.S. 1039 (1968).

19. As previously noted, Article 27 was designed to cover two contingencies, first, the death of the individual carrier, and second, the dissolution of the corporate carrier. If defendants' restricted interpretation of the word "deces" is adopted, Article 27 would be limited to only those cases where the carrier is an individual and the section would operate to prevent abatement. Since the drafters realized that many individuals were operating as

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* Defendants merely "question" whether the individual carriers have satisfied the regulations which defendants claim are factors. However, it should be noted that defendants have offered no proof that these or any other individual carriers have in any way failed to meet the alleged conditions. Defendants' questions are at best rhetorical and lack any probative significance.

carriers, a provision such as Article 27 was essential to assure survival of actions where the individual carrier dies.

But Article 27 has a broader meaning as Dr. Mapelli Lopez, General Counsel of Iberia and a recognized air law expert notes. While some other term might have been more precise, Dr. Lopez states that Article 27 does apply where a corporate carrier has ceased to exist, i.e. has dissolved, merged with or been acquired by another carrier or entered bankruptcy. Plaintiffs' Reply Memorandum at pp. 7-8. Thus, Article 27 offers no support for defendants' contentions.

C.

20. Defendants have not altered their essentially circular arguments relating to the TWA tariff and ticket provisions. Defendants' Supplemental Affidavit at pp. 9-11.

The CAB admittedly has the statutory authority to require an air carrier to state in its tariff that certain travel is governed by the Warsaw Convention. 14 C.F.R. § 221.38(j). However, it is quite clear that an air carrier, by a tariff filing, cannot alter, amend, supplement or modify the Warsaw Convention. The TWA tariff relied upon by the defendants states this explicitly:

> "Rule 2. APPLICABILITY OF TARIFF
>
> (A) General
>
> (5) Rules stating any limitation on, or condition relating to, the liability of carriers for personal injury or death are not permitted to be included in tariffs filed pursuant to the laws of the United States, except to the extend provided in Rule 16(B) (1) with respect to Tariff C.A.B. No. 17. Any such limitation or condition in any rule herein is not a part of Tariff C.A.B.

> No. 17 except to the extent provided in Rule 16(B) (1) with respect to Tariff C.A.B. No. 17 filed with the Civil Aeronautics Board of the United States. *Nothing in this Tariff modifies or waives any provision of the (Warsaw) Convention.*" TWA Joint Tariff R-3. [emphasis added]

By its own terms, the Tariff does not modify or waive any provision of the Convention. Therefore, it cannot extend the damage limitation to anyone not covered by the Convention's own terms. It certainly does not authorize the type of amendment and extension defendants urge.

21. Defendants again attempt to renew the argument that the TWA tickets' Notice and Paragraph 6 of the "Conditions of Contract" extend the limitation of liability to TWA officers and employees. As previously noted, ¶ 3 specifically incorporates the tariff which contains a prohibition against any attempts to limit liability for personal injuries caused by negligence. (See Plaintiffs' Reply Memorandum at 19-30).

Defendants, apparently recognizing that TWA cannot rewrite or amend Warsaw alone, argue that the Board's approval of the revised ticket can lead to the same result. However, the argument is not well founded.

The history of *Lisi, supra,* and the ticket form used by the airlines illustrate the point. At issue in *Lisi* was the adequacy of the notice given passengers pursuant to Article 3(1) of the Convention. The Court found the ticket inadequate in *Lisi* even though it had been passed on by the CAB. As a result of *Lisi,* the standard ticket form was revised and submitted to the Board for approval in 1969 and the new ticket form was approved by the CAB in 1969. See Exhibit "M", Defendants' Supplemental Memorandum. A copy of the Order itself (attached to Plaintiffs' Supplemental Affidavit as Exhibit "CC"),

reveals that it contains no reference whatsoever to the question of whether the Convention's limitations on liability extend to a carrier's officers or employees.

Any Board action approving a tariff or ticket must operate within the confines of the language of the Treaty. Even if the CAB had approved a form of ticket with provisions contrary to the specific terms of the Treaty, the provision would remain invalid. Questions of Treaty interpretation always rest with the Courts.

WHEREFORE, your deponent respectfully requests that the plaintiffs' motion be granted striking defendants' Second Affirmative Defense or, in the alternative, for partial summary judgment in plaintiffs' favor with respect to such affirmative defense.

Dated: New York, New York
April 14, 1976

STANLEY J. LEVY
STANLEY J. LEVY

(Sworn to April 14, 1976.)

A 257

EXHIBIT V--U.S. DEPT. LABOR, "PURCHASING POWER OF THE CONSUMER DOLLAR" ANNEXED TO SUPPLEMENTAL AFFIDAVIT OF STANLEY J. LEVY

[illegible]
MAY 1955

U.S. DEPARTMENT OF LABOR

Washington

RECORDS AUTHENTICATION CERTIFICATE

I HEREBY ATTEST, That the annexed copy, or each of the specified number of copies, of each document listed below is a true copy of a document in the official custody of the Department of Labor.

U.S. Department of Labor, Bureau of Labor Statistics, U.S. City Average, Purchasing Power of the Consumer Dollar, (1957-59=$1.00)

SIGNATURE AND OFFICIAL TITLE	DIVISION AND BUREAU	DATE
BRUCE HANCHETT, Asst. Reg. Director for Bureau of Labor Statistics	Bureau of Labor Statistics San Francisco, California	August 15, 1975

I HEREBY CERTIFY, That Bruce Hanchett who signed the foregoing attestation, is now and was at the time of signing (title) Asst. RD for Bureau of Labor Statistics and has legal custody of the official records of the United States Department of Labor therein attested and that full faith and credit should be given to his act as such.

IN WITNESS WHEREOF, I

Edward M. Reardon

duly designated by the Secretary of Labor as Authentication Officer of the Department of Labor, have hereunto subscribed my name and caused the seal of the Department of Labor to be affixed this 15th day of August 15 75.

Peirson M. Hall
U.S. District Court
Central District of California
U.S. Court House
312 North Spring Street
Los Angeles, CA. 90012

Authentication Officer
Department of Labor

A 258

Exhibit V Annexed to Supplemental Affidavit of Stanley J. Levy

U.S. DEPARTMENT OF LABOR
Bureau of Labor Statistics
Washington, D.C. 20212

U.S. City Average: Purchasing Power of the Consumer Dollar 1/--Series A-5
(1957-59=$1.00)

Date	1913	1914	1915	1916	1917	1918	1919	1920	1921
January	$2.921	$2.860	$2.840	$2.745	$2.459	$2.059	$1.735	$1.457	$1.503
February	2.935	2.887	2.854	2.745	2.401	2.034	1.775	1.471	1.557
March	2.935	2.901	2.860	2.726	2.386	2.045	1.756	1.455	1.571
April	2.921	2.921	2.860	2.697	2.290	2.025	1.723	1.415	1.589
May	2.942	2.908	2.847	2.685	2.239	1.985	1.702	1.391	1.621
June	2.929	2.887	2.840	2.656	2.218	1.947	1.694	1.373	1.629
July	2.906	2.860	2.840	2.656	2.234	1.902	1.652	1.379	1.627
August	2.887	2.821	2.840	2.622	2.202	1.870	1.623	1.417	1.621
September	2.874	2.807	2.827	2.578	2.164	1.823	1.612	1.432	1.638
October	2.860	2.827	2.801	2.546	2.126	1.794	1.588	1.440	1.643
November	2.847	2.821	2.783	2.499	2.123	1.768	1.551	1.449	1.652
December	2.854	2.827	2.769	2.488	2.077	1.737	1.517	1.483	1.660
AVERAGE	2.901	2.860	2.827	2.633	2.239	1.908	1.653	1.432	1.606

Date	1922	1923	1924	1925	1926	1927	1928	1929	1930
January	$1.694	$1.709	$1.665	$1.658	$1.650	$1.638	$1.665	$1.681	$1.679
February	1.702	1.712	1.670	1.667	1.609	1.652	1.679	1.683	1.686
March	1.719	1.707	1.681	1.665	1.615	1.650	1.679	1.690	1.694
April	1.721	1.697	1.668	1.667	1.601	1.660	1.674	1.694	1.698
May	1.721	1.694	1.668	1.660	1.610	1.647	1.667	1.686	1.694
June	1.717	1.688	1.666	1.643	1.623	1.632	1.681	1.681	1.707
July	1.714	1.670	1.683	1.621	1.640	1.663	1.681	1.665	1.730
August	1.730	1.674	1.666	1.621	1.647	1.671	1.676	1.656	1.737
September	1.728	1.667	1.679	1.627	1.636	1.663	1.663	1.658	1.730
October	1.717	1.663	1.671	1.618	1.632	1.654	1.667	1.655	1.737
November	1.709	1.658	1.667	1.594	1.626	1.656	1.670	1.665	1.756
December	1.704	1.660	1.665	1.600	1.627	1.658	1.676	1.671	1.775
AVERAGE	1.714	1.683	1.679	1.636	1.623	1.654	1.674	1.674	1.719

Date	1931	1932	1933	1934	1935	1936	1937	1938	1939
January	$1.805	$2.009	$2.227	$2.175	$2.106	$2.076	$2.038	$2.015	$2.059
February	1.832	2.038	2.264	2.156	2.093	2.087	2.032	2.034	2.066
March	1.845	2.048	2.281	2.156	2.097	2.097	2.015	2.034	2.069
April	1.859	2.053	2.290	2.161	2.060	2.097	2.009	2.028	2.072
May	1.876	2.091	2.276	2.156	2.057	2.097	1.999	2.034	2.076
June	1.897	2.104	2.260	2.152	2.093	2.072	1.995	2.034	2.080
July	1.902	2.112	2.191	2.148	2.101	2.066	1.989	2.032	2.072
August	1.906	2.134	2.175	2.145	2.101	2.052	1.979	2.036	2.060
September	1.914	2.145	2.172	2.115	2.091	2.045	1.967	2.038	2.038
October	1.920	2.161	2.172	2.126	2.093	2.052	1.973	2.045	2.045
November	1.947	2.175	2.175	2.134	2.083	2.055	1.985	2.052	2.045
December	1.989	2.195	2.183	2.137	2.072	2.055	1.991	2.045	2.059
AVERAGE	1.887	2.102	2.218	2.145	2.091	2.069	1.999	2.034	2.066

A 259

Exhibit V Annexed to Supplemental Affidavit of Stanley J. Levy

U.S. City Average: Purchasing Power of the Consumer Dollar 1/--Series A-5 (1957-59=$1.00)

Date	1940	1941	1942	1943	1944	1945	1946	1947	1948
January	$2.063	$2.034	$1.832	$1.699	$1.649	$1.612	$1.577	$1.335	$1.221
February	2.043	2.034	1.817	1.694	1.654	1.615	1.562	1.336	1.221
March	2.055	2.028	1.794	1.670	1.654	1.615	1.573	1.309	1.225
April	2.055	2.009	1.783	1.652	1.644	1.612	1.563	1.309	1.207
May	2.048	1.995	1.756	1.635	1.635	1.600	1.555	1.313	1.200
June	2.042	1.980	1.763	1.643	1.634	1.586	1.537	1.303	1.190
July	2.045	1.947	1.753	1.694	1.626	1.563	1.490	1.292	1.177
August	2.052	1.933	1.745	1.660	1.621	1.553	1.480	1.277	1.171
September	2.045	1.897	1.740	1.654	1.618	1.589	1.404	1.248	1.171
October	2.048	1.876	1.723	1.647	1.618	1.589	1.377	1.246	1.177
November	2.048	1.861	1.712	1.649	1.615	1.583	1.345	1.240	1.185
December	2.038	1.856	1.702	1.647	1.612	1.577	1.335	1.225	1.191
AVERAGE	2.048	1.951	1.761	1.656	1.632	1.595	1.471	1.285	1.194

Date	1949	1950	1951	1952	1953	1954	1955	1956	1957
January	$1.195	$1.220	$1.130	$1.085	$1.077	$1.055	$1.074	$1.071	$1.038
February	1.207	1.222	1.117	1.092	1.082	1.067	1.074	1.071	1.033
March	1.204	1.218	1.113	1.092	1.080	1.069	1.074	1.070	1.032
April	1.201	1.217	1.112	1.087	1.080	1.071	1.075	1.067	1.026
May	1.205	1.211	1.107	1.086	1.076	1.067	1.075	1.064	1.026
June	1.202	1.205	1.106	1.082	1.071	1.066	1.072	1.056	1.021
July	1.210	1.193	1.107	1.075	1.070	1.065	1.070	1.049	1.016
August	1.207	1.163	1.107	1.074	1.067	1.067	1.071	1.050	1.013
September	1.201	1.175	1.099	1.075	1.065	1.070	1.067	1.045	1.013
October	1.209	1.165	1.094	1.075	1.064	1.071	1.067	1.043	1.013
November	1.207	1.163	1.088	1.074	1.067	1.071	1.067	1.042	1.009
December	1.215	1.147	1.085	1.075	1.067	1.074	1.070	1.039	1.009
AVERAGE	1.205	1.194	1.106	1.081	1.072	1.069	1.071	1.056	1.021

Date	1958	1959	1960	1961	1962	1963	1964	1965	1966
January	$1.004	$ .991	$ .976	$ .963	$ .957	$ .943	$ .929	$ .918	$ .901
February	1.001	.991	.977	.962	.954	.943	.929	.916	.896
March	.995	.991	.977	.962	.952	.942	.929	.917	.893
April	.994	.990	.972	.962	.951	.942	.928	.915	.889
May	.993	.989	.972	.963	.951	.942	.926	.912	.888
June	.991	.985	.971	.962	.950	.938	.926	.906	.885
July	.990	.983	.969	.956	.948	.934	.923	.907	.883
August	.991	.983	.969	.956	.948	.934	.924	.909	.879
September	.991	.980	.968	.956	.943	.934	.923	.907	.876
October	.991	.978	.964	.956	.943	.933	.922	.906	.873
November	.990	.977	.963	.956	.943	.931	.920	.904	.873
December	.991	.978	.962	.957	.945	.929	.919	.901	.872
AVERAGE	.994	.985	.971	.960	.949	.937	.925	.910	.884

1/ Based on the Consumer Price Index for urban wage earners and clerical workers.

LABOR - D.C.

Exhibit V Annexed to Supplemental Affidavit of Stanley J. Levy

U.S. City Average: Purchasing Power of the Consumer Dollar 1/--Series A-5
(1957-59=$1.00)

Date	1967	1968	1969	1970	1971	1972
January	$ .872	$ .843	$ .806	$ .759	.722	.698
February	.871	.840	.803	.755	.720	.695
March	.870	.837	.796	.751	.718	.693
April	.867	.834	.791	.746	.715	.692
May	.865	.831	.789	.743	.712	.690
June	.862	.827	.784	.740	.708	.688
July	.858	.823	.780	.737	.706	.685
August	.855	.820	.777	.735	.704	.684
September	.854	.818	.773	.732	.704	.681
October	.851	.814	.770	.728	.702	.679
November	.849	.810	.766	.726	.701	.678
December	.846	.808	.762	.722	.699	.676
AVERAGE	.860	.825	.783	.740	.709	.686

Date	1973	1974	1975	1976	1977	1978
January	.675	.615	.551			
February	.669	.608	.547			
March	.663	.601	.545			
April	.658	.597	.542			
May	.654	.591	.540			
June	.649	.585	.535			
July	.648	.581				
August	.637	.574				
September	.635	.567				
October	.630	.562				
November	.625	.557				
December	.621	.555				
AVERAGE	.646	.582				

Date	1979	1980	1981	1982	1983	1984
January						
February						
March						
April						
May						
June						
July						
August						
September						
October						
November						
December						
AVERAGE						

LABOR - D.C.

A 261

EXHIBIT W--C.A.B. COMPILATION OF ACCIDENT STATISTICS 1964-1973 ANNEXED TO SUPPLEMENTAL AFFIDAVIT OF STANLEY J. LEVY

CIVIL AERONAUTICS BOARD
WASHINGTON, D.C. 20428

IN REPLY REFER TO: B-32

October 21, 1975

Mr. Lee S. Kreindler
Kreindler and Kreindler,
Attorneys at Law
99 Park Avenue
New York, New York 10016

Dear Mr. Kreindler:

Jim Landry has informed me that you indicated that you had not received the C.A.B. compilation of accident statistics compiled for the period 1964 through 1973. Although these statistics have not yet been compiled as a C.A.B. publication, on January 31, 1975 I did forward to you several of the most pertinent tables which have been compiled in a comprehensible form. I regret that it appears that those tables may have been lost or mislaid.

Please find enclosed a copy of my January 31 letter, and the pertinent tables which were transmitted therewith.

Very truly yours,

Peter B. Schwarzkopf

Peter B. Schwarzkopf
Assistant to the
General Counsel,
International Affairs

Enclosures

cc: James Landry

Exhibit W Annexed to Supplemental Affidavit of Stanley J. Levy

NON-WARSAW DEATH SETTLEMENTS EXCEEDING STATED AMOUNTS
(By Settlement Year)

Recovery Amount	1970		1971		1972		1973		1974*	
	No.	%	No.	%	No.	%	No.	%	No.	%
$ 1,000	112	100	169	99.4	164	99.4	99	100	141	100
10,000	110	98.4	169	99.4	158	95.6	96	96.7	141	100
50,000	69	61.7	107	62.9	107	64.7	52	52.3	126	89.3
75,000	65	58.1	88	51.7	78	47.1	42	42.2	107	75.8
100,000	56	50.1	74	43.5	62	37.4	35	35.1	87	61.6
125,000	53	47.4	49	28.8	51	30.7	31	31.1	74	52.4
150,000	51	45.6	41	24.1	44	26.5	27	27.1	64	45.3
200,000	45	40.2	30	17.7	27	16.2	22	22.1	53	37.5
250,000	33	29.5	25	14.7	22	13.2	19	19.1	45	31.9
300,000	21	18.8	20	11.7	14	8.4	18	18.1	37	26.2
500,000	2	1.8	5	2.9	6	3.6	4	4.0	16	11.3
750,000	0	0	0	0	0	0	2	2.0	5	3.5
1,000,000	0	0	0	0	0	0	1	1.0	0	0
TOTAL SETTLEMENTS (687)	112		170		165		99		141	

*First six months

TABLE 1

Exhibit W Annexed to Supplemental Affidavit of Stanley J. Levy

NON-WARSAW SERIOUS INJURY SETTLEMENTS EXCEEDING STATED AMOUNTS
(By Settlement Year)

Recovery Amount	1970		1971		1972		1973		1974*	
	No.	%	No.	%	No.	%	No.	%	No.	%
$ 1,000	32	84.2	37	90.2	24	96.0	32	86.5	75	100
10,000	14	36.8	23	56.0	16	64.0	21	56.7	73	97.3
50,000	9	23.6	5	12.1	6	24.0	7	18.9	51	68.0
75,000	7	18.3	2	4.8	2	8.0	5	13.5	38	50.7
100,000	5	13.0	1	2.4	1	4.0	4	10.8	32	42.7
125,000	4	10.4	1	2.4	1	4.0	3	8.1	29	38.7
150,000	4	10.4	1	2.4	0	0	3	8.1	24	32.0
200,000	3	7.8	1	2.4	0	0	3	8.1	21	28.0
250,000	2	5.2	0	0	0	0	3	8.1	19	25.3
300,000	2	5.2	0	0	0	0	2	5.4	16	21.3
500,000	1	2.6	0	0	0	0	0	0	7	9.3
750,000	1	2.6	0	0	0	0	0	0	1	1.3
1,000,000	0	0	0	0	0	0	0	0	0	0
TOTAL - SETTLEMENTS (216)	38		41		25		37		75	

* First six months

TABLE 2

Exhibit W Annexed to Supplemental Affidavit of Stanley J. Levy

WARSAW DEATH SETTLEMENTS EXCEEDING STATED AMOUNTS
(By Settlement Year)

Recovery Amount	1970		1971		1972		1973		1974*	
	No.	%	No.	%	No.	%	No.	%	No.	%
$ 1,000	17	100	28	93.3	16	100	28	100	13	100
10,000	17	100	28	93.3	16	100	28	100	12	92.3
50,000	8	47.1	6	20.0	3	18.8	22	78.6	8	61.5
75,000	3	17.7	4	13.3	1	6.3	15	53.6	1	7.7
100,000	2	11.8	4	13.3	1	6.3	14	50.0	1	7.7
125,000	2	11.8	3	10	1	6.3	14	50.0	0	0
150,000	2	11.8	3	10	1	6.3	14	50.0	0	0
200,000	1	5.9	0	0	0	0	7	25.0	0	0
250,000	0	0	0	0	0	0	7	25.0	0	0
300,000	0	0	0	0	0	0	7	25.0	0	0
500,000	0	0	0	0	0	0	5	17.9	0	0
750,000	0	0	0	0	0	0	1	3.6	0	0
1,000,000	0	0	0	0	0	0	0	0	0	0
TOTAL SETTLEMENTS (104)	17		30		16		28		13	

* First six months

TABLE 3

Exhibit W Annexed to Supplemental Affidavit of Stanley J. Levy

WARSAW SERIOUS INJURY SETTLEMENTS EXCEEDING STATED AMOUNTS
(By Settlement Year)

Recovery Amount	1970		1971		1972		1973		1974	
	No.	%	No.	%	No.	%	No.	%	No.	%
$ 1,000	5	62.5	25	80.6	37	80.4	23	100	22	100
10,000	3	37.5	3	9.6	17	36.9	15	65.0	14	63.5
50,000	0	0	1	3.2	5	10.9	4	17.3	5	22.6
75,000	0	0	0	0	2	4.4	2	8.6	2	9.0
100,000	0	0	0	0	1	2.2	1	4.3	2	9.0
125,000	0	0	0	0	1	2.2	1	4.3	1	4.5
150,000	0	0	0	0	0	0	1	4.3	1	4.5
200,000	0	0	0	0	0	0	0	0	1	4.5
250,000	0	0	0	0	0	0	0	0	1	4.5
300,000	0	0	0	0	0	0	0	0	1	4.5
500,000	0	0	0	0	0	0	0	0	0	0
750,000	0	0	0	0	0	0	0	0	0	0
1,000,000	0	0	0	0	0	0	0	0	0	0
TOTAL SETTLEMENTS (130)	8		31		46		23		22	

* First six months

TABLE 4

Exhibit W annexed to Supplemental Affidavit of Stanley J. Levy

A-266

PASSENGER AGREEMENTS REACHED WITH JUDGMENTS AND SETTLEMENTS

IN WARSAW AND NON-WARSAW CASES - U.S. CARRIERS

SETTLEMENT YEAR	PASSENGER DEATH NO. OF SETTLEMENTS	PASSENGER DEATH TOTAL SETTLEMENTS	PASSENGER DEATH AVERAGE PER DEATH	SERIOUS INJURIES NO. OF SETTLEMENTS	SERIOUS INJURIES TOTAL SETTLEMENTS	SERIOUS INJURIES AVERAGE PER SERIOUS INJURY
NON-WARSAW						
[illegible]	1	$49,000	$49,000	6	$36,740	$6,123
[illegible]	23	$1,384,724	$60,205	11	$77,488	$7,044
[illegible]	46	$4,708,476	$102,358	25	$1,018,857	$40,754
[illegible]	29	$1,793,546	$61,846	23	$1,115,930	$48,518
[illegible]	117	$13,366,488	$114,243	25	$977,422	$39,097
[illegible]	128	$18,000,079	$140,625	35	$1,476,851	$42,195
[illegible]	112	$18,518,524	$165,343	38	$2,411,662	$63,464
[illegible]	170	$21,035,249	$123,736	41	$973,107	$23,736
[illegible]	165	$20,189,129	$122,358	25	$717,119	$28,685
[illegible]	99	$14,676,136	$148,243	37	$1,939,096	$52,408
[illegible]	141	$32,802,650	$232,640	75	$12,849,250	$171,323
TOTALS	1031	$146,606,001	$142,195	341	$23,593,610	$69,189
WARSAW						
[illegible]	2	$17,567	$8,783	1	$60	$60
[illegible]	39	$369,102	$9,464	8	$37,000	$4,625
[illegible]	24	$223,216	$9,300	5	$48,682	$9,736
[illegible]	13	$182,093	$14,007	1	$750	$750
1969	11	$721,695	$65,609	2	$1,750	$875
[illegible]	29	$1,771,996	$61,792	5	$27,734	$5,547
1970	17	$1,003,690	$59,040	8	$99,421	$12,302
[illegible]	30	$1,477,766	$49,258	31	$199,777	$6,444
[illegible]	16	$706,995	$44,187	46	$955,765	$20,777
[illegible]	28	$6,143,020	$219,393	23	$805,600	$35,026
[illegible]	13	$715,918	$55,070	22	$1,076,303	$48,923
[illegible]	242	$13,353,049	$60,140	152	$3,250,101	$21,382

TABLE 5

Best Copy Available

Exhibit W annexed to Supplemental Affidavit of Stanley J. Levy

A-267

PASSENGER RECOVERIES INCLUDED WITH COMPLAINTS AND SETTLEMENTS

IN WARSAW AND NON-WARSAW CASES - U.S. CARRIERS

SETTLEMENT YEAR	PASSENGER DEATH NO. OF SETTLEMENTS	TOTAL SETTLEMENTS	AVERAGE PER DEATH	SERIOUS INJURIES NO. OF SETTLEMENTS	TOTAL SETTLEMENTS	AVERAGE PER SERIOUS INJURY
NON-WARSAW						
[illegible]	1	$49,000	$49,000	6	$36,740	[illegible]
[illegible]	23	$1,384,724	$60,205	11	$77,488	[illegible]
[illegible]	46	$4,708,476	$102,358	25	$1,018,857	[illegible]
[illegible]	29	$1,793,546	$61,846	23	$1,115,930	[illegible]
[illegible]	117	$13,366,488	$114,243	25	$977,422	[illegible]
1967	128	$18,000,079	$140,625	35	$1,476,851	[illegible]
[illegible]	112	$18,510,524	$165,343	38	$2,411,662	[illegible]
[illegible]	170	$21,035,249	$123,736	41	$973,107	[illegible]
[illegible]	165	$20,107,129	$122,350	25	$717,119	[illegible]
1973	99	$14,676,136	$148,243	37	$1,939,096	[illegible]
1974	141	$32,802,650	$233,210	75	$12,847,250	$171,323
TOTALS	1031	$146,604,001	$142,195	341	$23,593,610	$69,189
WARSAW						
[illegible]	2	$17,567	$8,783	1	$60	[illegible]
[illegible]	30	$369,102	$9,464	8	$37,049	[illegible]
[illegible]	24	$223,216	$9,300	5	$40,082	[illegible]
[illegible]	13	$182,093	$14,007	1	$750	$750
[illegible]	11	$721,695	$65,607	2	$1,750	$875
[illegible]	29	$1,791,996	$61,792	5	$27,704	[illegible]
1975	17	$1,003,690	$59,040	8	$95,421	$11,302
[illegible]	30	$1,477,766	$49,258	31	$199,777	[illegible]
[illegible]	16	$706,996	$44,187	46	$955,765	[illegible]
[illegible]	28	$6,143,020	$219,393	23	$805,600	[illegible]
[illegible]	13	$715,918	$55,070	22	$1,074,303	[illegible]
[illegible]	222	$13,353,049	$60,148	152	$3,250,101	[illegible]

EXHIBIT X--III CONG. RECORD 17,882 (1965) ANNEXED TO SUPPLEMENTAL AFFIDAVIT OF STANLEY J. LEVY

posed that he would spend the re- of his life on the Supreme Bench. ly all of us the Supreme Court is a ent assignment, and properly so. re few other tasks which can justify from the Court one of its most exper- brilliant members. Yet there are ns to all rules, and we surmise that the instance in which the country will applaud the drafting of a Justice for court undertaking.

Supreme Court's loss will be the Nations' gain. The primary concern filling this vacancy has been whether sident could find a man who would be and worthy successor to Ambassador Stevenson. A routine appointment, feared, might have the effect of de- the prestige of the U.N. and of down- the U.S. relations to it. That danger n entirely averted. When a man of dberg's stature leaves a lifetime posi- the highest court in the land to be- S spokesman at the U.N. it is a pow- tatement to this country's belief in the rganization and in the orderly settle- f international differences.

praising Mr. Goldberg's qualifications task, however, it is more pertinent to his work as Secretary of Labor in Presi- ennedy's Cabinet and his previous ca- the bar. From a highly competitive he emerged as one of the country's labor lawyers; he repeatedly demon- great capacity as a negotiator and as man for the cause of labor. This mind plus his resourcefulness as a de- will be invaluable at the U.N.

oint Mr. Goldberg has put aside his robe it is well to remember also that re many laments when he gave up ublic career as Secretary of Labor for ench. Some wondered at the time of his dynamism, his administrative and his skill as a mediator could not to greater advantage outside the Ju- ciary. There has been no suggestion that he was not well adjusted to the ial life of a judge. But the other quali- ich made him a formidable figure in inet have not been lost in the 3 years e succeeded Justice Felix Frankfurter. willingness of Mr. Goldberg to leave ace place in the judicial hierarchy for ish scramble of international politics York tells much about the quality of esmanship. No one can seriously ept he accepted this more difficult ment out of a sense of duty. Many Justice Charles Evans Hughes per- himself to be nominated for the Pres- and later Justice James F. Byrnes left rt to become a wartime assistant to nt Roosevelt for similar reasons. We can be stated as a simple fact that dberg would not have left the Court had not been convinced that his country ater need of his talents at the U.N. the bench.

problems he faces in the world orga- are staggering. A man of his intel- could have no illusions about that. ewed his assignment as being inti- related to "the greatest adventure in istory"—his search for peace and the law. In this context it was no mis- an act of great courage and faith to ourse he has taken. The problems believe him are not things that can ed out by any one individual, but much satisfaction in knowing that of Arthur Goldberg's talents and n will be directing the U.N. aspects ternational struggle for a more orderly

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The Washington (D.C.) Evening Star, July 21, 1965]

Ambassador Goldberg

of the comment on the selection of J. Goldberg to succeed Adlai Stev- enson as our Ambassador to the United Nations has dwelt on resemblances between the two men. And this may be justified in terms of intellect, outlook, and human sympathies. But in other respects the President could have searched far and wide without finding two more dissimilar men.

Mr. Stevenson, with all of his talents, was a rather diffident, introspective man—a man not given to aggressive self-assurance. Mr. Goldberg is cut from a different pattern. His long climb up the ladder from abject poverty as a child in Chicago instilled in him, and rightly so, a notable confidence in himself and his abilities. After his experience as a topflight labor lawyer, as a trouble-shooting Secretary of Labor, and as an "activist" member of the Supreme Court, it could hardly be otherwise. The Russian or other anti-American delegate who elects to cross verbal swords with him in the U.N. will quickly discover that he has taken on a formidable opponent. This is not to suggest that Mr. Goldberg, with his independent turn of mind, will always be in accord with every word of the fine print in American foreign policy. But his differences of opinion, if and when they arise, will be argued out within the administration. He must be in full sympathy, however, with the basic policies which our Government has been advocating in the U.N. Were it otherwise, the President would not have appointed him, nor would Mr. Goldberg have accepted the appointment.

Some wonderment has been expressed as to why the new ambassador would give up a lifetime seat on the Supreme Court to take a post in which he will serve at the pleasure of the President. His reduced salary—$9,500 less in the ambassadorial post—is offset at least to some extent by the perquisites that go with the position. But money could not have figured importantly in the decision.

As a member of the High Court, it could hardly be said that Mr. Goldberg was cabin'd, cribb'd, and confined by the traditions of that institution. There is, however, reason to believe that he chafed under such mild restraints as his judicial status imposed upon him. Furthermore, at 56, he can reasonably look forward to a long and rewarding future. One of these rewards lies in the opportunities for service which will be open to him in this new assignment. He can be expected to serve with distinction, and the President has done well to give him the chance.

The new ambassador and his lady will be missed in Washington. But this entire community wishes them well as they enter a new phase in their productive lives.

THE HAGUE PROTOCOL TO THE WARSAW CONVENTION

Mr. GORE. Mr. President, the Senate is soon to consider the Hague protocol to the Warsaw Convention relating to international transportation by air. In my view, this is of major significance per se, but its implications are even more important.

Mr. HARTKE. Mr. President, will the Senator yield?

Mr. GORE. I yield.

Mr. HARTKE. Mr. President, the Senator from Tennessee is about to address the Senate on a very important matter which evidently did not receive very much consideration in the Committee on Foreign Relations, or, at least, not the kind of consideration that I hope it will receive on the floor.

I associate myself with the Senator from Tennessee. I hope that I can be of some help in presenting the true facts relating to this matter to the attention of the Senate.

Mr. GORE. Mr. President, I appreciate the remarks of the Senator. I shall welcome his aid.

Mr. President, I respectfully suggest that serious consideration be given to three points.

First, this protocol, and the convention which it amends, does not concern the U.S. Government directly. Rather, it deals with relationships between the airlines and people who use them. And it does so in a grossly inequitable manner. Its real purpose is to limit, by treaty, the liability of airlines and their insurance companies in tort actions growing out of death or injury of passengers due to negligence on the part of airline employees.

Second, the effect of this entire document is to repeal and override domestic law. Now, I do not object to the high standing given treaties by the Constitution and by the Supreme Court. Nor do I object to the Court's 1920 decision in Missouri against Holland. What I do object to is the casual way in which the Congress, in approving the Warsaw Convention in 1934, legislated by treaty on a domestic matter. I would like to point out at this time, also, that we will shortly consider a whole series of treaties which will have the effect of altering domestic tax law. These international agreements must be given due consideration and only approved by the Senate, if approved, with the full knowledge of the purport and extent of the proposal.

Third, this protocol has been only halfheartedly endorsed by the administration. Indeed, its endorsement has been made conditional on the enactment of legislation which is itself of questionable propriety, but which has not yet been cleared by the committee considering it. In my opinion, enactment of the proposed legislation is quite doubtful. As I understand the official position of the State Department, it is that in the event the bills are not enacted, we should denounce the basic Convention and withdraw from it. It would seem hardly necessary to point out that we should enact such legislation before we give new life to the Convention by approving the protocol.

If what I have just stated is correct, we have three courses of action open to us.

First, the Senate can refuse to give its consent to this Protocol. The State Department can then denounce the Convention and withdraw from its terms. "Denounce" may seem like an ugly word, but in this case it is not. A specific provision covering this procedure is set out in the Convention itself.

Second, Senate action can be withheld pending disposition of the accompanying compulsory insurance legislation recommended by the State Department, but opposed by the airlines.

Third, the Senate can approve this protocol, thereby giving an outdated and harmful treaty a new lease on life, thereby continuing indefinitely a situation which nearly everyone agrees is undesirable, but which is excused on various grounds.

The first course of action is clearly preferable. The second is the least we

A 269

Exhibit X Annexed to Supplemental Affidavit of Stanley J. Levy

can do. The third is, to me, unconscionable.

Let me explain as briefly as possible just what is involved.

In 1929, when international aviation was in its infancy, and practically nonexistent so far as the United States was concerned, a Convention was negotiated to provide for the standardization of certain procedures with respect to the handling of passengers, baggage, and freight. But the really important feature was the limitation on the amount which could be recovered from the airline in the event of negligence resulting in injury or death of passengers. This figure was placed at $8,300. A greater recovery could be effected only upon proof of the grossest negligence, and the degree of negligence depended on the interpretation of a French term unknown to American law.

Although this ran counter to all American legal concepts, the President in 1934 asked the Senate to approve this Warsaw Convention, and the Senate did so.

In an effort to ascertain the views of Senators at that time, I sought to read the Senate debates. There were none. On June 15, 1934—legislative day June 6—the Senate gave its "advice" and "consented" to 12 treaties. There was some discussion of a Mexican claims matter, but none whatsoever of this Warsaw Convention.

So I felt it would be well to examine the Foreign Relations Committee report and hearings. My staff reported that they could not locate these documents. This sounded a bit strange, so I asked one of the experts at the Legislative Reference Service to obtain these documents for me. I was told that after a thorough search of the records of the Library of Congress, an inquiry of the Department of State Treaty Division and of the National Archives nothing of this sort could be found. There is only the barest account of the Senate action in the Executive Journal and in CONGRESSIONAL RECORD.

I am thus forced to the conclusion that the Senate acted in 1934 in the most routine fashion on a matter deemed to be of no particular importance.

And yet, a few years later the lovely singing star Jane Froman was to be horribly crippled and denied recovery of more than $8,300.

And only a few years later former U.S. Senator Capehart was told that his grandchildren would be limited to a total recovery of either $8,300 or $16,600, even though his son and daughter-in-law had been killed as a result of the gross negligence of the crew of the plane in which they were flying. Because of the determination and resourcefulness of our former colleague, this particular incident had a somewhat brighter ending eventually through court action. But the airlines and their insurance companies have taken note of the ways in which American courts have begun to get around the specified limits and these interests have sought to make it even more difficult to avoid the specified recovery limits by altering and making more stringent the degree of gross negligence in this protocol. I shall have more to say about this point shortly.

But now we are being asked to do something much worse than the Senate did in 1934. We are being asked, in the light of the full knowledge of the inequities wrought over the past 30 years by the Warsaw Convention, to ratify the Hague protocol to this convention which will, although it increases the specified recovery limits to $16,600, so tighten the language of this treaty that, in the words of an attorney who specializes in this field, a plaintiff will "have to prove essentially that the pilot wanted to commit suicide" in order to recover more than the specified $16,600 treaty limit.

Perhaps the Senate of 1934 could not be expected to foresee the consequences of its action.

I must confess my inability to understand why Senators today, when international aviation has reached prominence and great proportion, and after the inequities of the convention are so well known, would approve such a grossly unfair proposition.

There is always a certain amount of tenderness involved in dealings between or among governments, and I am fully appreciative of this fact. The United States is and must be, if there is to be such, the leader of the non-Communist world. To do this, we must have due regard for the sentiments of other governments, and I would yield doubts in favor of upholding the President when an agreement negotiated by the State Department and involving other governments is before the Senate. That is not to say that I would or will always support anything the State Department negotiates. But only overweening reasons would likely overcome my natural inclination to support my Government in negotiations involving other governments.

But what we are dealing with here is relationships which shall exist between airlines and people who use them. In the words of the spokesman for the State Department who presented the case for ratification, as recorded on page 1 of the Foreign Relations Committee hearings on May 26, 1965:

> The principle [sic] subject matter of the Warsaw Convention and of The Hague protocol is the liability of air carriers in international transportation for loss of life or injury to passengers and cargo.

This could hardly be more clearly stated. This is not a treaty among governments concerning their official acts. It is essentially legislation affecting private rights by way of treaty.

So let us not be misled by any false notions that we will be in some way forfeiting part of our internationalism if we apply ordinary rules of commonsense and equity to this matter. If we find that the Senate did not fully comprehend the nature of its action in 1934, or if we find that conditions have so changed as to require some new course, let us not hesitate to alter our course.

Something should be done about the Warsaw Convention. It no longer properly serves its intended purpose. But The Hague protocol is not a solution, as even the State Department openly admits.

I think it is appropriate to point out these things. We should examine this Convention and protocol as we would examine a bill coming out of the Commerce Committee which would limit liability in negligence cases involving domestic airlines.

The Constitution and the Supreme Court have given high standing to treaties. Treaties can override domestic law. Domestic laws can be enacted on the basis of a treaty provision which might go far beyond any powers the Federal Government could legally claim under the Constitution. This has been clearly stated by the Supreme Court, and not by the Warren court, either, but by the staid, if not reactionary, Court of 1920, in Missouri against Holland.

I am not objecting to this, but I want my colleagues to understand the full import of the proposed action.

More than 2 million Americans travel across international borders by air each year. Americans account for about 60 percent of international air travel.

Of all international commercial air travel, Americans constitute 60 percent. Such a tribute to the eminence of our country. Such a tribute to the verve, the drive, the leadership of the people of our country. But remember, when the Senate ratifies a treaty such as proposed, 60 percent of the people whose rights will be limited thereby are, under present conditions, American citizens.

Furthermore, when a ticket from Los Angeles to London by way of New York is purchased, the portion of the flight from Los Angeles to New York is generally covered by the Warsaw Convention.

I wish you to note this point, Mr. President. An American traveling from Dallas to Washington or New York with a ticket for London may be injured or may be killed because of the negligence of an airline in landing in New York or Boston or Washington; and yet, under this treaty, he may be able to recover only $8,300, even though his hospital bills might reach $100,000 or more. Or, if he is killed, his wife and children may find themselves coldly comforted by the grand award of $8,300. Why? Because of this treaty, which supersedes domestic law. And it is proposed by the protocol to tighten the opportunity of recovery made, even though the limit of $8,300 goes to $16,600.

This is contrary, in my opinion, to the whole system of American law under which one who is harmed through negligence of another is entitled to be made whole. Is that not the law in Alaska?

Mr. GRUENING. It is law in Alaska. We hope it will be law everywhere continuously.

Mr. GORE. I thank my friend.

Ordinary domestic air travel carries with it no such protection for the airlines and their insurors and no such penalty against passengers. International airlines do not need this kind of protection and our citizens traveling abroad, many of whom may not be aware of the Warsaw Convention, should not be penalized by it.

Exhibit X Annexed to Supplemental Affidavit of Stanley J. Levy

This proposition would be ludicrous if it were not so serious. All responsible airlines carry liability insurance, even if they are under the umbrella of the Warsaw Convention. If we remove that umbrella and return to our citizens the rights to which they are entitled, rights they enjoy when traveling on domestic flights, with foreign extension of their choice, the additional cost of the insurance the international airlines would have to carry in order to protect themselves from more equitable judgments or settlements would be equivalent, it has been estimated, to the grand sum of 62 cents on a ticket from New York to London.

Let me repeat. When we get right down to bare facts, we are talking about 62 cents versus the rights American air travelers have at home and ought to have, but are denied under this Convention and protocol, when traveling to London or elsewhere abroad.

This would be ludicrous if so much tragedy were not involved—tragedy such as Jane Froman and the children and grandchildren of Senator Capehart suffered.

Of course, these 62-cent increments count up, and I can understand why the airlines want this protocol approved. And I can understand, up to a point, the State Department's position. The State Department simply cannot bring itself to withdraw from an international agreement, even an unrealistic one that is admittedly contrary to the best interests of American citizens.

Although the Warsaw Convention has never been understood by most Americans—indeed, its existence is not known by many who come under its terms—it has sufficiently well and unfavorably known for some considerable pressure to be applied for either its revision or its denunciation. A liability limit of $8,300 is just so unthinkable that even the courts were searching for ways to avoid that limit.

So, the Hague protocol was negotiated, dated September 28, 1955. It was signed on behalf of the United States on June 28, 1956. The State Department took some time about sending it along its way to the Senate for advice and consent—and I am not sure whose advice and consent was ever requested. But former Secretary Herter finally, on July 2, 1959, transmitted it to President Eisenhower who, in turn, sent it to the Senate on July 24, 1959. It languished here until hearings were held on May 26 and 27 of this year. If this protocol were really going to accomplish any good, that 10-year period from its negotiation to the present time would look awfully long. But I think it is a mischievous agreement, an unsound and unfair agreement.

It would appear that someone had trouble justifying this protocol, for in 1961 this whole matter was restudied by an interagency group. This group produced one of those committee camels—a thing this protocol came out more closely resembling the humpback than the lean.

For the base of this 1961 new-look solution was a compulsory $50,000 insurance policy to be carried by U.S. airlines on all international passengers. This requires legislation we have not yet enacted and which we, in my opinion, may never enact, and, indeed, ought not to enact.

The State Department spokesman told our committee:

> The present administration and its predecessors have recognized this shortcoming—

He was referring to the low limit on liability—

> and have debated whether the Hague protocol provides an adequate answer.

After further discussion, he stated that the State Department supported "two basic related recommendations," ratification of the Hague protocol and enactment of legislation to require American international airlines to carry automatic $50,000 policies for everyone. He then went on to say that "adequate protection" would not be provided "until both of these recommendations are given effect."

I wish my colleagues would read the testimony given at the hearings. Here is another statement of the State Department spokesman—and I am not criticizing him. He made out the best case he could. Indeed, how could a spokesman for the administration make out a strong case for a procedure which the Government itself abjures? For, when this protocol is ratified, all governments joining in this treaty will be notified that it does not apply to air travel where the Defense Department charters an airplane for its own use. The Defense Department, wisely in my opinion, will not impose the burden of this inequitable liability limit on our troops.

I applaud the Department, but why should the Senate approve a protocol which applies to all American citizens using international airline service? I do not believe that it should be imposed on any of our citizens.

I doubt the advisability of enacting the proposed insurance legislation, as I said. In the first place, it would cover only U.S. international airlines. Second, it violates all our legal concepts and rules in tort actions. It would provide the same payment for the death of a child of 13 or a condemned criminal as for the death of an executive in the midst of his prime earning years. And it would not be related to negligence in any way whatsoever. Third, and I do not know how much weight to give to this point, it has been suggested that this automatic insurance might give rise to more sabotage. Airline saboteurs have generally been caught through their purchase of insurance, but if everyone on the plane has automatic insurance no clue will be provided there.

Regardless of my personal views, however, I think it is safe to suggest that the proposed legislation is not likely to become law. Bills were introduced in 1961. No action was taken on them. S. 2032 and H.R. 8386 were introduced this year, and were referred to appropriate committees. No action has been scheduled. No action has been taken. I see no sign that any action will be taken on the proposed legislation, which it is alleged must accompany the proposed treaty in order to achieve a degree of equity. It seems to me that we should have legislation before we ratify the protocol.

During the past several years, the U.S. courts, appalled at the $8,300 liability limit in the Warsaw Convention have found ways to render justice in some cases despite the convention. Attorneys who specialize in such cases are now getting some decent judgments for their clients. The grandchildren of Senator Capehart were finally given, after years of litigation, some $50,000 each for the death of their parents—and it would appear that there was the grossest kind of negligence in that instance.

But in the Jane Froman case the judge gave a charge to the jury under which it was almost impossible to go beyond the $8,300 limit. It might come as a surprise to some that the airlines support this protocol which would double the limits of their liability, but the answer is to be found here. In clarifying the Warsaw Convention language regarding willful misconduct which would allow recovery above the treaty limits, the Hague protocol uses the language of the jury charge in the Jane Froman case. This would make it virtually impossible for a plaintiff to recover beyond the treaty limits if we ratify this Hague Protocol.

What sins are committed in the name of "clarification" and "technical amendments"?

Mr. President, the United States ought to withdraw from the Warsaw Convention. This convention may have served some useful purpose in its early years, when international aviation was in its infancy and one very large judgment might have wiped out an airline. But this situation no longer obtains. The larger airlines are making huge profits and all carry insurance, in addition. Airline protection, if it was ever a valid reason to deny U.S. citizens their legal rights, is no longer persuasive.

The other reason advanced for keeping the Warsaw Convention alive by adopting this protocol is that it is to the advantage of the traveling public to have uniformity of ticketing and handling of shipments. There is something in this argument, but not much. There is now an effective airlines association through which such matters are worked out in practice. Furthermore, many countries are not parties to this convention, including several Latin American nations important to the United States. No difficulty is now being experienced in operating through these countries, so far as I am aware.

As I said in the beginning of my remarks, the preferable action at this time is for the Senate to refuse to agree to this protocol. That action would, I hope, encourage the State Department and the President to denounce the Warsaw Convention under the provisions laid down in the Convention itself. American citizens who are damaged by the negligence of international airline employees could then pursue legal remedies in U.S. courts, and under U.S. law.

Even if the State Department could not bring itself to denounce a treaty, however outdated and inequitable, American citizens would fare better with the

Warsaw Convention in effect, with its $8,300 limit, than they would under The Hague protocol, with its $16,000 limit, but with its much tougher language governing the degree of negligence necessary to avoid the stated limit of liability. It is necessary to prove an almost deliberate act, amounting practically to pilot suicide, in order to recover under The Hague protocol.

There is one other procedure we could follow at this time. The Senate could return this matter to the Foreign Relations Committee with instructions to hold it in abeyance until the compulsory insurance bill, which the State Department says is necessary if The Hague protocol is to prove adequate, is enacted into law.

It is my hope, then, that the Senate will either defer consideration of the protocol or reject it.

Mr. GRUENING. I compliment the Senator from Tennessee on the noble work he is doing in defending the rights of American citizens who are traveling, against the inequities proposed in the treaty.

Mr. GORE. I thank the Senator.

REMARKS BY VICE PRESIDENT HUMPHREY AT THE WHITE HOUSE CONFERENCE ON EDUCATION

Mr. MORSE. Mr. President, yesterday, the Vice President of the United States addressed the White House Conference on Education. He made what I consider to be one of the most brilliant speeches on the subject of education that the Vice President and former Senator from Minnesota has ever delivered in his many years of dedicated public service.

As chairman of the Subcommittee on Education, I wish to say that when the Vice President was a Senator from Minnesota I could always count on him for unfailing support in behalf of all legislation which it was my responsibility to present to the Senate and to seek to have the Senate pass.

The speech he gave to the White House Conference on Education yesterday, in my judgment, will stand to his everlasting credit as a statesman. I urge my colleagues to read it. I merely wish to read three short paragraphs from it in paying my thanks to him for making this brilliant speech. At the end of his speech he said:

> Let us proceed, then, to let quality in education enhance the quality of life. Let opportunity in education lend opportunity to all mankind.
>
> We shall be known as teachers, not warriors; as educators, not conquerors. Our legacy will not be the wealth of our Treasury, but the richness of man's culture.
>
> No, man cannot be both ignorant and free. There is little doubt in my heart—or mind—that this Nation can, as in the past, lead the way to freedom.

To this and to everything else he said in his speech, I say "Amen."

I ask unanimous consent that this great speech by the Vice President of the United States be inserted in the RECORD at this point.

There being no objection, the address was ordered to be printed in the RECORD, as follows:

REMARKS BY VICE PRESIDENT HUBERT HUMPHREY, WHITE HOUSE CONFERENCE ON EDUCATION, JULY 21, 1965

I am honored to participate in this historic White House Conference on Education. I am told your discussions have been productive and stimulating. I am confident that your efforts will provide ideas and insights into a great and exciting task: the task of educating young minds.

For education is the keystone in the arch of man's freedom.

I suspect every person in this room shares the opinion of Thomas Jefferson, expressed when he sought support for his University of Virginia: "What service can we ever render to our country equal to promoting education? * * * The exertions and mortifications are temporary; the benefit eternal."

President Johnson has left no doubt concerning the exertions this administration is willing to make to provide every American child entering life with an unfettered opportunity for education and training—an opportunity limited only by the capacities and initiative of that child.

And in the 88th and 89th Congresses the mortifications have been remarkably few. We have passed historic legislation for education, and we will pass even more before adjournment this fall—including the Higher Education Act and the President's proposed, new Teaching Professions Act of 1965.

Yet, despite our successes, we cannot be wholly satisfied with the condition of education in this country.

Today we see great ferment and tumult in American education—students rebel against faculty * * * faculty rebels against school administration and school administration calls down a plague on both houses.

Parents demand rearrangement of school boundaries, other parents protest what they feel are threats to the neighborhood school, and local elected official and school administrators find themselves squarely in the middle.

Our era sometimes appears to be one of walk-outs, sit-ins, sit-outs, teach-ins, picketing, threats, and a general debate over educational policies and practices in all sections of the United States.

The American people have made the schoolroom a focal point of controversy, debate, and commotion.

The essence of the situation is this: Parents want greater educational opportunity for their children.

Our young Americans, too, have greater goals and ambitions.

These go beyond education.

Today's young Americans seek opportunity, in general, to lead more meaningful and productive lives—not just for personal gain, but also to pursue a more peaceful and just world.

Today, the American people realize that the future of our democracy—and perhaps the future of mankind—is related directly to the education available to the people of this country and the world.

We need not agree with the form some of today's educational ferment has taken.

No responsible person condones violence or the violation of laws. No responsible person advocates actions which endanger the civil peace of our local communities or our college campuses. And no one supports forms of irresponsibility and immaturity which foster dissension and chaos for their own sake.

The processes of debate and reexamination of our educational policies cannot escape from our common obligations to preserve the processes of democracy and the rule of law.

But let us be honest with ourselves as we recognize that, despite the dedication and hard work of American educators, there are deficiencies in American education. We must correct them.

We must, for example, continue eliminating obsolete and outmoded teaching methods and curriculums—methods and curriculums which stunt the development of creative thinking and understanding.

We have begun to emphasize the importance of understanding the basic structure of mathematics, languages, and the physical and biological sciences.

As you know far better than I, new approaches in these subjects show that our young people have astounding capacity for learning when they are truly challenged and excited by the learning process.

Let us make the learning process exciting, too, in teaching of the humanities, the social sciences, and the arts.

For these are the disciplines at the heart of creative expression and, indeed, of free political institutions.

These are the disciplines which perpetuate the priceless value of our civilization and guarantee that men will remain the masters of science.

We must have the courage and foresight to use new mechanisms and devices to help the learning process. We cannot afford to wage educational research and development because we are timid or lack the imagination to use what is new.

Visual aids, educational TV, and teaching machines, for instance, have not yet been used to their full potential.

We must, of course, balance and integrate these approaches with the experience that only a skillful teacher can provide. There ample evidence exists to suggest that such balances can be achieved in almost every subject area.

We must also accelerate our attempts to improve the training and preparation of teachers * * * to explore more efficient patterns of local school organization * * * to develop additional sources of money available to our States and localities to pay for better education.

Yes, we have an obligation to adapt our educational system to meet the challenges and demands of a changing world. In the past few years we have come a long way toward meeting these challenges and demands. But we still have great ground to cover.

For example, there is one overwhelming task among the great challenges facing education—a task in which I have personal responsibility.

What about education for the poor and deprived? How can we muster greater courage and imagination in combatting this most difficult problem? How can we halt the tragic waste of human resources?

This administration is working hard to provide our States and localities with some of the tools needed to accomplish this mission.

The Elementary and Secondary Education Act, the Economic Opportunity Act, the vocational education amendments, and the Manpower Training and Development Act have opened new horizons for young people who most need them.

Now, the President has called for a Teaching Professions Act which would create a National Teachers Corps to provide outstanding teachers "with a sense of mission" to serve in both urban and rural areas. Those who enlist in this Corps will be sent to schools that most teachers regard as undesirable assignments—where children tend to be undisciplined, poorly dressed, and too often poorly taught, as well.

Here is the chance to dispell forever the myth that children from deprived areas are just unable to learn—that schools can

A 272

EXHIBIT Y--III CONG. RECORD 15,596 (1965) ANNEXED TO SUPPLEMENTAL AFFIDAVIT OF STANLEY J. LEVY

The PRESIDING OFFICER. The Senator from Illinois will state it.

Mr. DIRKSEN. Do I correctly understand that notwithstanding that the vote is on the conference report, a two-thirds majority is required for its adoption?

The PRESIDING OFFICER. The Senator from Illinois is correct. The clerk will call the roll.

The legislative clerk called the roll.

Mr. LONG of Louisiana. I announce that the Senator from New Mexico [Mr. ANDERSON], the Senator from Nevada [Mr. BIBLE], the Senator from Nevada [Mr. CANNON], the Senator from Louisiana [Mr. ELLENDER], the Senator from Arkansas [Mr. FULBRIGHT], the Senator from North Carolina [Mr. JORDAN], the Senator from Missouri [Mr. LONG], the Senator from Washington [Mr. MAGNUSON], the Senator from Montana [Mr. MANSFIELD], the Senator from New Mexico [Mr. MONTOYA], the Senator from Oregon [Mr. MORSE], the Senator from West Virginia [Mr. RANDOLPH], and the Senator from Oregon [Mrs. NEUBERGER] are absent on official business.

I also announce that the Senator from Alaska [Mr. BARTLETT], the Senator from Virginia [Mr. BYRD], the Senator from Mississippi [Mr. EASTLAND], and the Senator from Indiana [Mr. HARTKE] are necessarily absent.

I further announce that, if present and voting, the Senator from Nevada [Mr. BIBLE], the Senator from North Carolina [Mr. JORDAN], the Senator from Oregon [Mr. MORSE], and the Senator from West Virginia [Mr. RANDOLPH] would each vote "yea."

On this vote, the Senator from Mississippi [Mr. EASTLAND] and the Senator from Nebraska [Mr. HRUSKA] are paired with the Senator from New Mexico [Mr. ANDERSON]. If present and voting, the Senator from Mississippi would vote "yea," the Senator from Nebraska would vote "yea," and the Senator from New Mexico would vote "nay."

On this vote, the Senator from Nevada [Mr. CANNON] and the Senator from Louisiana [Mr. ELLENDER] are paired with the Senator from Washington [Mr. MAGNUSON]. If present and voting, the Senator from Nevada would vote "yea," and the Senator from Louisiana would vote "yea," and the Senator from Washington would vote "nay."

On this vote, the Senator from Indiana [Mr. HARTKE] and the Senator from Montana [Mr. MANSFIELD] are paired with the Senator from New Mexico [Mr. MONTOYA]. If present and voting, the Senator from Indiana would vote "yea," the Senator from Montana would vote "yea," and the Senator from New Mexico would vote "nay."

Mr. KUCHEL. I announce that the Senator from Vermont [Mr. AIKEN], the Senator from Colorado [Mr. DOMINICK], the Senator from Nebraska [Mr. HRUSKA], and the Senator from California [Mr. MURPHY] are absent on official business.

The Senator from Utah [Mr. BENNETT], the Senator from Kansas [Mr. CARLSON], the Senator from New Hampshire [Mr. COTTON], the Senator from Hawaii [Mr. FONG], the Senator from Massachusetts [Mr. SALTONSTALL], and the Senator from Wyoming [Mr. SIMPSON] are necessarily absent.

If present and voting, the Senator from Vermont [Mr. AIKEN], the Senator from Utah [Mr. BENNETT], the Senator from Colorado [Mr. DOMINICK], the Senator from Hawaii [Mr. FONG], the Senator from California [Mr. MURPHY], the Senator from Massachusetts [Mr. SALTONSTALL], and the Senator from Wyoming [Mr. SIMPSON] would each vote "yea."

On this vote, the Senator from Nebraska [Mr. HRUSKA] and the Senator from Mississippi [Mr. EASTLAND] are paired with the Senator from New Mexico [Mr. ANDERSON]. If present and voting, the Senator from Nebraska and the Senator from Mississippi would each vote "yea," and the Senator from New Mexico would vote "nay."

The yeas and nays resulted—yeas 68, nays 5, as follows:

[No. 164 Leg.]

YEAS—68

Allott	Holland	Pearson
Bass	Inouye	Pell
Bayh	Jackson	Prouty
Boggs	Javits	Proxmire
Brewster	Jordan, Idaho	Ribicoff
Burdick	Kennedy, Mass.	Robertson
Byrd, W. Va.	Kennedy, N.Y.	Russell, S.C.
Case	Kuchel	Russell, Ga.
Church	Long, La.	Scott
Clark	McClellan	Smathers
Cooper	McGee	Smith
Curtis	McGovern	Sparkman
Dirksen	McIntyre	Stennis
Dodd	McNamara	Symington
Douglas	Metcalf	Talmadge
Ervin	Miller	Thurmond
Fannin	Monroney	Tydings
Gruening	Morton	Williams, N.J.
Harris	Moss	Williams, Del.
Hart	Mundt	Yarborough
Hayden	Muskie	Young, N. Dak.
Hickenlooper	Nelson	Young, Ohio
Hill	Pastore	

NAYS—5

Gore	McCarthy	Tower
Lausche	Mondale	

NOT VOTING—27

Aiken	Dominick	Magnuson
Anderson	Eastland	Mansfield
Bartlett	Ellender	Montoya
Bennett	Fong	Morse
Bible	Fulbright	Murphy
Byrd, Va.	Hartke	Neuberger
Cannon	Hruska	Randolph
Carlson	Jordan, N.C.	Saltonstall
Cotton	Long, Mo.	Simpson

The PRESIDING OFFICER. On this vote, the yeas are 68, the nays 5. Two-thirds of the Senators present and voting having voted in the affirmative, the conference report is agreed to.

Mr. BAYH. Mr. President, I move to reconsider the vote by which the conference report was agreed to.

Mr. KUCHEL. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

HAGUE PROTOCOL TO WARSAW CONVENTION IS DETRIMENTAL TO INTERNATIONAL AIR PASSENGERS' RIGHTS AND SHOULD NOT BE RATIFIED

Mr. YARBOROUGH. Mr. President, I greatly regret to see now pending on our Executive Calendar the question of ratification of the Hague Protocol. This protocol has been pending before the Senate since the 86th Congress' 1st session, without being reported to the Senate by the Foreign Relations Committee for ratification or rejection, and I think the reasons are very strong that a little further delay will be beneficial for protecting the rights of American air passengers on international flights.

Although under American common law a person injured by another's negligence can recover his full damages, this Hague Protocol limits an international air carrier's responsibility to its injured passengers to $16,600. Under the existing Warsaw Convention, although there is a stated limit of $8,300, testimony before the Senate Foreign Relations Committee indicates that most cases can be settled for more than the $16,600 limits of Hague. And the Hague Protocol closes the doors by which injured passengers can avoid being limited in the damages they receive.

No one contends that $16,600 is an adequate amount to compensate for serious injuries or death to an air passenger. The State Department recommends ratification of this Hague Protocol only if companion legislation is enacted requiring an additional $50,000 in accident insurance on each international air passenger on a U.S. airline. That legislation is pending before the Senate Commerce Committee as S. 2032, but who can predict when or if it will be enacted?

In summary, an American injured on an international flight now can probably receive more than $16,600 in settlement of his claim. If S. 2032, is enacted, he can be assured of $50,000 in an accident policy. But if we should ratify the Hague Protocol now without waiting for that legislation, American air passengers will be limited to $16,600 or less in their claims for death or injury.

The New York Times has recently spoken out against the folly of ratifying the Hague Protocol in a well-reasoned editorial. I quote from their conclusion:

> The glaring shortcomings in the Hague Protocol and in the insurance plan to strengthen it argue for their rejection even if it means the end of the Warsaw Convention. The treaty had justification in the early days of air transport, when airlines could have been put out of business by unpayable damage suits. It is unjustified now that airlines are financially sound and furnish uniform documentation in normal course; yet the administration is seeking to reaffirm allegiance to its outdated and miserly provisions for passenger protection.

I ask unanimous consent that the complete text of the editorial, "Protection in the Air," from the June 16, 1965, New York Times be printed at this point in the RECORD.

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

PROTECTION IN THE AIR

Passengers on international airline flights involved in an accident have since 1934 been covered by the Warsaw Convention, which provides a limited liability code and uniform documentation on tickets and cargo for international air carriers. Under its antiquated provisions liability for loss of life or injury is limited to only $8,300, except where willful misconduct is proved. Recognizing that this amount is wholly inadequate, the signatories have proposed an amendment

called the Hague Protocol, to double airline liability to $10[illegible]—which still would be wholly inadequate.

But the State Department is pressing for approval of the Hague Protocol along with a plan for compulsory accident insurance that would furnish passengers on American airliners up to $[illegible] in case of injury or death. Leonard C. Meeker, the State Department's legal adviser, warned the Senate Committee on Foreign Relations that if it rejects the Hague Protocol "we would have to give serious consideration to denunciation of the Warsaw Convention" and if the compulsory insurance scheme is not approved "we would then also have to consider whether to withdraw from the Warsaw Convention."

Even with the insurance benefit added to the Hague Protocol's proposed ceiling, airline passengers will be shortchanged. Personal injury insurance in the United States provides compensation proportionate to the injury sustained, so that the family of an executive who dies in the prime of life usually gets more than the survivors of a retired person. But the administration's scheme would substitute a fixed amount, which is contrary to American principle and unfair in practice, and would not guarantee protection to Americans traveling on foreign airliners. Moreover, the Hague Protocol introduces language so rigid that it would become vastly more difficult for passengers—or their estates—to recover damages beyond the $16,600 limit.

The glaring shortcomings in the Hague Protocol and in the insurance plan to strengthen it argue for their rejection even if it means the end of the Warsaw Convention. The treaty had justification in the early days of air transport, when airlines could have been put out of business by sizable damage suits. It is unjustified now that airlines are financially sound and furnish uniform documentation in normal course; yet the administration is seeking to reaffirm allegiance to its outdated and miserly provisions for passenger protection.

FEDERAL CIGARETTE LABELING AND ADVERTISING ACT—CONFERENCE REPORT

Mr. McGEE. Mr. President, I submit a report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 559) to regulate the labeling of cigarettes, and for other purposes, and ask unanimous consent for the present consideration of the report.

The PRESIDING OFFICER. The report will be read for the information of the Senate.

The legislative clerk read the report.

(For conference report, see House proceedings of July 13, 1965, pp. 16540–16541, CONGRESSIONAL RECORD.)

The PRESIDING OFFICER. Is there objection to the present consideration of the report?

There being no objection, the Senate proceeded to consider the report.

Mr. CLARK. Mr. President, will the Senator yield?

Mr. McGEE. I am glad to yield.

Mr. CLARK. I would like to have the Senator from Wyoming give us a brief explanation of what the conferees did about the cigarette problem. There were a number of us in the Senate who supported the position of the Senator from Oregon, who, unfortunately, cannot be present this afternoon, and who are very much opposed to the provision that for 3 years the Congress undertake to prohibit the Federal Trade Commission from issuing regulations with respect to the advertising of cigarettes. We were defeated, to be sure—I think unwisely—but that is the way it goes.

I should like to know just what is in the conference report.

Mr. McGEE. The conferees agreed on a moratorium for 3½ years from the effective date. The conference report was a unanimous report. The Senate version of the bill generally prevails.

Mr. CLARK. Will the Senator yield further?

Mr. McGEE. I yield.

Mr. CLARK. It is my understanding, as a practical matter, that the conference report which the Senator from Wyoming brings before the Senate is in substance the Senate bill, except as to the time during which the Federal Trade Commission is prohibited from doing anything to prevent what seems to me to be the iniquitous practices in the advertising of the cigarette industry, which, however, the industry does not admit to engaging in. It is not true that the moratorium is a victory for Madison Avenue which will permit it to do what it wishes in this field for 3½ years?

Mr. McGEE. I would say only that we agreed to a 3½-year moratorium, and would not care to add the embellishments which the Senator has seen fit to do.

Mr. CLARK. Am I correct in stating that in the House version of the bill the Federal Trade Commission would have been prohibited forever from stopping such advertising?

Mr. McGEE. Yes.

Mr. CLARK. So to that extent the Senator from Oregon and other Senators who did not wish to have any restrictions placed on regulations, which it seemed to us would have been wise for the Federal Trade Commission to issue, may be said to have won a limited victory over the other body?

Mr. McGEE. A partial victory would be a correct statement.

Mr. CLARK. I should merely like here to call attention to what the cigarette lobby has done to the Congress of the United States. I deplore the action of the Senate—even more that of the House. Having voted against the bill in the first instance, because I thought no bill was better than a bill like this which ties the hands of the regulatory body which this Congress wisely set up to deal with matters of this kind, I shall not ask for a yea-and-nay vote. However, I want the RECORD to show that having voted originally against the bill because I thought no bill was better than a bill which so tied the hands of the Federal Trade Commission to issue regulations on this matter, I shall vote against the report.

Mr. McGEE. The Senator is aware, is he not, that the warning must be on all cigarette packages by January 1, 1966.

Mr. CLARK. Yes; it will be on the cigarette package. There is some question as to how prominently it will be displayed. But the place where cigarette smoking is promoted, where young people are encouraged to take up the habit which may result in their dying of lung cancer, is in the big, full page advertisements of the well-known magazines, where all kinds of attractive scenes are portrayed: boy meets girl, girl meets cigarette, boy meets cigarette, girls and boys smoke cigarettes and everyone gets lung cancer.

I thank my friend for yielding to me.

Mr. MORTON. Mr. President, the record, I believe, must be made clear that the bill in no way restricts the power of the Federal Trade Commission. It still has its full power under the Organic Act concerning false and deceptive advertising. I do not know of any other product that has not been proved to contain some poison, such as certain detergents, cleansers, and so on, that has gone as far as the cigarette product in having the warning, "Cigarette smoking may be hazardous to health," placed on a package of cigarettes. The cigarette industry does not like this, naturally, but Congress did it, and I voted for it. I believe that it is a good thing to do, but at the same time I do not believe this is a Madison Avenue victory or the victory of any lobbyist. The cigarette industry would have preferred to have had no bill.

Mr. CLARK. Will the Senator from Wyoming yield to me, in order that I may ask a question of the Senator from Kentucky?

Mr. McGEE. I yield.

Mr. CLARK. Will the Senator from Kentucky explain to me what he means when he says—as I understand it, in reply to what the Senator from Wyoming said—that the bill does not in any way diminish the powers of the Federal Trade Commission?

Mr. MORTON. It does not diminish the powers of the Federal Trade Commission that I feel belong to the Federal Trade Commission. The senior Senator from Kentucky [Mr. COOPER] made this statement a judicial argument before the committee, in showing that the Commission had far exceeded the powers Congress had given it, when it issued the order that this regulation would go into effect on July 1.

Mr. CLARK. I understood the Senator from Kentucky to state that the Federal Trade Commission never had authority to issue any regulations in respect to advertising; is that not correct?

Mr. MORTON. No; it is not correct. I say they have the authority under the bill, and they have the authority now, to issue all kinds of regulations and to take action against any false and misleading advertising.

Mr. CLARK. If the Senator will yield further, do I correctly understand my friend to say that the Federal Trade Commission could, tomorrow, prevent the advertising of cigarettes which did not include a statement in the advertising similar to the warning on the cigarette package, that cigarette smoking may be deleterious to health?

Mr. MORTON. The Federal Trade Commission has never had authority to say what goes into an advertisement for Lysol, for instance, that it is poisonous.

Mr. CLARK. I am not interested in Lysol. I am interested in cigarettes. I should like to clarify the situation further—I may appear to be antagonistic, but really I am not. Is it not now the law that a statement must be made on every package of cigarettes to the effect—and I

EXHIBIT Z--III CONG. RECORD 16,716 (1965) ANNEXED TO SUPPLEMENTAL AFFIDAVIT OF STANLEY J. LEVY

Mr. President, I ask unanimous consent that the citation of Mr. [illegible] Paulucci by the Horatio Alger Awards Committee be printed in the RECORD.

There being no objection, the citation was ordered to be printed in the RECORD, as follows:

JENO F. PAULUCCI

Jeno F. Paulucci, president and chairman of the board of the Chun King Corp., began working in 1925 at age seven by picking coal along the railroad tracks near the iron mines in Hibbing, Minn. During the depression, this son of Italian immigrants unloaded coal cars for 50 cents an hour, worked as a handy man in a local market, hawked vegetables from street corners, and helped operate a family grocery store in neighboring Aurora. Forced to abandon his prelaw studies at Hibbing Junior College after a year-and-a-half, Mr. Paulucci became a wholesale food salesman in the depressed Iron Range area of northern Minnesota. In 1946, months before his 24th birthday, he borrowed $2,500 and began raising beansprouts in a rented chicken hut in Grand Rapids. During the 14 years that followed, his keen marketing imagination, limitless energy, and passionate belief in the power of free enterprise converted that simple beansprout-raising venture into the food-growing, packaging and marketing complex that makes Chun King the Nation's largest producer of canned and frozen American-Oriental foods. Today, in addition to Chun King, Mr. Paulucci owns the Chun King Corp. of Canada, Ltd.; Northland Foods, Inc., and Etor Realty Corp., in Duluth.

LEASE GUARANTEES FOR SMALL BUSINESSMEN

Mr. MONDALE. Mr. President, I am pleased to note that both the Senate and House omnibus housing bills contain a provision that would guarantee the leases of small businesses displaced by urban renewal projects. It is with further pleasure that I point out that since 1959, Vice President HUBERT H. HUMPHREY had been in the forefront as a Senator in advocating lease guarantees for disadvantaged small businesses unable to obtain leases due to harsh credit requirements.

In 1959, Senator HUMPHREY's Subcommittee on Retailing, Distribution, and Fair Trade Practices commenced hearings on "Alleged Discriminatory Practices Against Small Business Concerns in Suburban Shopping Centers." These hearings explored the increasing practice of excluding or severely limiting the entrance of small businesses into newly developed shopping centers.

Senator HUMPHREY learned that, for greater protection on their leases, the insurance companies and corporations financing these widely developing shopping centers required that between 70 and 85 percent of the rental space go to those businesses with a net worth of at least $1 million. Senator HUMPHREY's subcommittee learned that the problem was not just restricted to new shopping centers. During the December 1961 hearings, Senator HUMPHREY stated:

We have discovered that the same problems exist for smaller retailers in obtaining leases on prime locations in downtown business districts and for all independent businessmen desiring major remodeling of existing leased facilities.

Senator HUMPHREY further stated that "many shopping center developers have told us they would actually prefer, themselves, to grant leases to successful merchandisers in their own community, rather than to the national operators," but that the developers do not have a free choice to do so due to the stringent credit requirements imposed by the lending institutions.

In January of 1960, Senator HUMPHREY submitted his subcommittee's report to the whole Select Committee on Small Business under its very able chairman, Senator SPARKMAN. This report urged further exploration by the subcommittee of the problems first touched upon in the April hearings. The report recommended that the subcommittee conduct an intensive review to determine the feasibility of expanding the authority of the Small Business Administration so that it might insure lease bonds written by private surety companies. This approach and others were considered. Indeed, the subcommittee, in its first recommendation, urged continued work toward a solution by the private business interests involved. But, as Senator SPARKMAN stated in the May 1962 "Report on Small Business Lease Guarantees":

It rather rapidly became apparent that private surety companies felt themselves unable to increase the length and number of lease bonds they were issuing.

The lease guarantee provisions for small business replaced by urban renewal projects, contained in both the Senate and House omnibus housing bills, is an important step toward solving the problems that Senator HUMPHREY first raised. To this end, I congratulate the Vice President and all the Congressmen who have explored and supported legislation to benefit small businesses that have faced curtailment of development, expansion and relocation due to the stringent and much too confining requirements of lending institutions. It is important for the welfare and freedom of the United States that independent business be preserved. Without small, independent business, concentration will become the rule and competition the exception.

HAGUE PROTOCOL TO THE WARSAW CONVENTION

Mr. ERVIN. Mr. President, the proposed Hague Protocol to the Warsaw Convention ought to be rejected by the U.S. Senate because it confers upon commercial airlines special exemptions from liability, both legal and financial in nature, which are enjoyed by no other commercial enterprise. Moreover, the United States should withdraw from the Warsaw Convention for like reasons. There is no justification whatsoever for denying to American travelers who are injured by the negligence of commercial airlines just recompense for their injuries or granting to commercial airlines special immunity and limitations from liabilities for negligence not enjoyed by any other commercial enterprise.

The reasons why the Senate should reject the Hague Protocol to the Warsaw Convention and why the United States should withdraw from the Warsaw Convention are well stated in a letter which Mr. J. W. Clontz, an attorney in High Point, N.C., wrote to me on June 17, 1965, and an editorial which appeared in the New York Times on June 16, 1965. I ask unanimous consent that a copy of such letter and a copy of such editorial be printed at this point in the body of the RECORD as a part of my remarks.

There being no objection the letter and editorial were ordered to be printed in the RECORD, as follows:

HIGH POINT, N.C.,
June 17, 1965.

Hon. SAM J. ERVIN, JR.,
U.S. Senate,
Washington, D.C.

DEAR SENATOR ERVIN: I received your letter dated June 11, 1965, concerning the Hague Protocol and Warsaw Convention. To be sure, the provisions of the Warsaw Convention may be an improvement in some ways, but it still, in my opinion, is not the complete answer. First, as to compulsory insurance, my information is that this is very doubtful of passage. Therefore, it would be better to defer action on the Hague Protocol until this were acted upon. Even the airlines oppose this compulsory insurance. The plan would provide a fixed sum of $50,000 for the death of anyone over 12 years old, or for serious personal injuries which would be paid automatically; and consequently this would overcompensate some parties and seriously underpay most others or their estate. For instance, if a family of four were to die consisting of mother, father, and two children over 12 this would result in insurance benefits of $200,000 to the next of kin, even though this next of kin be a nondependent, distant cousin. On the other hand, a young executive in the prime of life, earning $25,000 to $50,000 a year, leaving a widow and two children would obtain the totally inadequate sum of $50,000 in insurance for his family. This would invite more Federal control over insurance which insurance companies oppose and which I oppose personally, since I think the Federal Government is controlling enough of our everyday life and our business life. For these reasons, I have been told that the compulsory insurance will not pass and the Hague Protocol should, therefore, be rejected or deferred.

The main point in withdrawing from the Warsaw Convention and refusing ratification of the Hague Protocol is that the main purpose of the original Warsaw Convention has been served, and the need no longer exists. The idea in its infancy was to protect the young airlines, a large recovery against them being sufficient to wipe them out in their early days of business. This situation no longer exists for the reason that in 1964 Pan American had a net profit of $37 million and carried 5,325,000 revenue passengers over 9,020,000 revenue passenger miles. The number of revenue passengers carried by this one airline in 1964 is more than 100 times the total number of passengers carried by air in the United States in 1926. Trans World Airlines had a net profit of $36,969,000 in another example. Under present-day business conditions, no lawsuits due to culpable or common negligence which I have in mind, could possibly wipe out or even cripple any airline in existence that I know of. The main question seems to me to be, shall we allow each plaintiff the right to recover in part for the damages he has sustained, or shall we jump this bulwark of our system of jurisprudence to arbitrarily limit recovery and hedge in the plaintiff with other artificial rules?

Exhibit 2 Annexed to Supplemental Affidavit of Stanley J. Levy

The limitation under the Warsaw setup is $8,300 and the Hague limitation is $16,600, but there should not be any limitation whatsoever in the second time. Another aspect of the Hague Protocol is the insistence of the principle of "willful misconduct" which states in effect that to recover in any event in excess of the limitation, one must show willful misconduct which as you very well know, being a former judge, is practically impossible. It also removes the liability of the agents and employees of the defendant airlines, which help exists, even under the Warsaw Convention. Furthermore, the Hague Protocol removes the mandatory responsibility of the airlines to print on their tickets the fact that liability limitation does exist when it does. The new situation would be that the tickets would say that liability may exist. In this connection, you will find that quite often the limitation exists even for passengers in the United States, but later is to be continued into a foreign country, which brings about the strange situation of their fellow passengers in case of accident having no limitations for their liability claims, but the ones who are going yet further into foreign countries being limited by the Warsaw Convention. This inequity is completely indefensible.

The point about the Hague Protocol giving a presumption of negligence has no bearing with our present theory of res ipsa loquitur. For these and other reasons, that I have given before, it seems to me that the best course is to completely abandon the Warsaw Convention and reject the Hague Protocol. Let the airlines, which are literally booming, face actions for culpable or common negligence and ordinary negligence like any other tort feasors do in our present-day business life. They should be in no way worse off than anyone else, but certainly should not be in any better position, legally speaking, than anyone else; and certainly the plaintiffs who have suffered injuries at their hands because of their negligent action should not be barred from recovery since we afford this protection to no other organizations in America that I know of.

Furthermore, in closing, let me say that I have been informed again that over 50 percent of the air travel in the world today is by Americans and surely our principles of jurisprudence should apply. In closing, I want not be amiss to quote from the New York Times which states as follows:

"Those favoring renunciation feel that a limitation on damage claims is not 'the kind of internationalism that is calculated to capture the imagination or the spirit of people overseas.' They feel renunciation would help this country's propaganda position.

"We agree that renunciation probably would find more favor than censure among foreign populations. The risk of some damage to intergovernmental relations is more than outweighed, we believe, by the need to protect the individual's right to reasonable damages."

I hope that this letter will benefit your thinking somewhat, and that you will agree with me.

With best wishes, I remain,

Sincerely,

J. W. CLONTZ.

[From the New York Times, June 16, 1965]

PROTECTION IN THE AIR

Passengers on international airline flights involved in an accident have since 1934 been covered by the Warsaw Convention, which provides a uniform liability code and uniform documentation of tickets and cargo for international air carriers. Under its antiquated provisions liability for loss of life or injury is limited to only $8,300, except where willful misconduct is proved. Recognizing that this amount is wholly inadequate, the signatories have proposed an amendment, called the Hague Protocol to double airline liability to $16,600—which still would be wholly inadequate.

But the State Department is pressing for approval of the Hague Protocol along with a plan for compulsory accident insurance that would furnish passengers on American airliners up to $50,000 in case of injury or death. Leonard C. Meeker, the State Department's legal adviser, warned the Senate Committee on Foreign Relations that if it rejects the Hague Protocol "we would have to give serious consideration to denunciation of the Warsaw Convention," and if the compulsory insurance scheme is not approved "we would then also have to consider whether to withdraw from the Warsaw Convention."

Even with the insurance benefit added to the Hague Protocol's proposed ceiling, airline passengers will be shortchanged. Personal injury insurance in the United States provides compensation proportionate to the injury sustained, so that the family of an executive who dies in the prime of life usually gets more than the survivors of a retired person. But the administration's scheme would substitute a fixed amount, which is contrary to American principle and unfair in practice, and would not guarantee protection to Americans traveling on foreign airliners. Moreover, the Hague Protocol introduces language so rigid that it would become vastly more difficult for passengers—or their estates—to recover damages beyond the $16,600 limit.

The glaring shortcomings in the Hague Protocol and in the insurance plan to strengthen it argue for their rejection even if it means the end of the Warsaw Convention. The treaty had justification in the early days of air transport, when airlines could have been put out of business by sizable damage suits. It is unjustified now that airlines are financially sound and furnish uniform documentation in normal course; yet the administration is seeking to reaffirm allegiance to its outdated and miserly provisions for passenger protection.

WALL STREET AND MAIN STREET AGREE ON LIBERALIZING STOCK MARKET MARGIN REQUIREMENTS

Mr. HARTKE. Mr. President, for the past 2 months, the New York Stock Exchange has been demonstrating to the world its uncertainty about the future of our present, unprecedented economic expansion. At the heart of this uncertainty has been a lack of confidence in the American Government's determination to keep that expansion rolling. Until the New York stock market is convinced that our Government will defend our prosperity as vigorously as it has defended our dollar, there is little likelihood indeed that values on the stock market will rise to reflect the great and growing economic strength of this Nation. When the New York stock market refuses to give a clear vote of confidence to the American economy and to American economic policy, it is difficult to expect the rest of the world to believe in the strength of that economy and the determination of that policy.

For the last 3 weeks, therefore, I have been urging the Federal Reserve to liberalize stock market margin requirements to facilitate the purchase of securities on credit. At this time, such a move would not encourage an outbreak of speculation, for the speculators have been burned. At this time, such a move would underscore our Government's commitment to sound and stable expansion on the part of both the national economy and the New York stock market.

Two days ago, I received the welcome support of Mr. Keith Funston, president of the New York Stock Exchange. Mr. Funston wrote me:

Since November 1963, the Federal Reserve Board has required 70 percent initial margins, and the ensuing 19 months have witnessed a marked decline in margin debt and activity. * * * Therefore, we have felt for some time that a 50-percent initial margin requirement would be a more reasonable level.

Mr. President, I come from a small city on the banks of the Ohio River. Evansville, Ind., is a long way from New York, N.Y. It has been my experience that opinion on Main Street in Evansville is very rarely in agreement with opinion on Wall Street in New York. But it has also been my experience that when Main Street and Wall Street get together on a question of national interest and national policy, action is taken. Main Street and Wall Street now agree that the Federal Reserve Board should move with all speed to liberalize stock market margin requirements.

I ask unanimous consent that Mr. Funston's letter be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

NEW YORK STOCK EXCHANGE,
New York, N.Y., July 9, 1965.

The Honorable VANCE HARTKE,
The U.S. Senate,
Washington, D.C.

DEAR SENATOR HARTKE: I was interested to read in the CONGRESSIONAL RECORD of June 25, 1965, your suggestions concerning reserves and margin requirements for purchasing securities. Let me point out, by the way, that reserve requirements have no direct connection with the stock market. Those requirements are imposed by the Federal Reserve on its member banks.

As to margin requirements, however, we do appreciate your interest, because margin transactions are an important source of the liquidity essential to our market. While the exchange sets maintenance margin requirements, the initial margin requirement—which governs how much cash a customer must put up to buy stock—is under the direct control of the Federal Reserve Board.

Since November 1963, the Board has required 70-percent initial margins, and the ensuing 19 months have witnessed a marked decline in margin debt and activity. In addition, the great bulk of margin customers are currently very well margined. Therefore, we have felt for some time that a 50-percent initial margin requirement would be a more reasonable level.

We would certainly hope that, in the near future, the Federal Reserve Board would give serious consideration to your suggestion that this requirement be lowered.

Sincerely yours,

G. KEITH FUNSTON.

THE MAINTENANCE OF THE U.S. MERCHANT MARINE

Mr. BREWSTER. Mr. President, some of our leading maritime labor and management officials have demanded the resignation of Mr. Nicholas Johnson, the Maritime Administrator.

EXHIBIT AA--III CONG. RECORD 20,165 (1965) ANNEXED TO SUPPLEMENTAL AFFIDAVIT OF STANLEY J. LEVY

Mr. ANDERSEN. Gentlemen, thank you for being with us this week on "Capitol Closeup."

VETERANS' ADMINISTRATION HOSPITAL IN THE DISTRICT OF COLUMBIA RENAMED MELVIN J. MAAS MEMORIAL HOSPITAL

Mr. YARBOROUGH. Mr. President, on yesterday, the Senate passed S. 788, a bill which designates the Veterans' Administration hospital in the District of Columbia as the Melvin J. Maas Memorial Hospital. This is a most worthy piece of legislation and will enable the example of the courageous and gallant General Maas to be an inspiration to future generations.

Mr. President, I ask unanimous consent that an explanation of the bill and a short biography of General Maas be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

EXPLANATION OF S. 788

The bill (S. 788), if enacted, would designate the Veterans' Administration hospital in the District of Columbia as the Melvin J. Maas Memorial Hospital.

BIOGRAPHY OF GENERAL MAAS

General Maas was reappointed Chairman of the President's Committee on Employment of the Handicapped on March 4, 1961, by President Kennedy. He had previously served as Chairman since appointed on April 13, 1954, by President Eisenhower. In addition he served as chairman emeritus of the Committee for the Handicapped People-to-People programs, having been named chairman by President Eisenhower on May 29, 1956.

His career included 16 years as a Congressman from Minnesota; service in the U.S. Marines, rising from a private in marine aviation in 1917 to the rank of major general in August 1952. He was a native of Duluth, Minn.

CONGRESS

General Maas was first elected to Congress from Minnesota in 1926, at the age of 27. He served from 1927 to 1933 and from 1939 to 1945. In 1933 he received national recognition and the Carnegie Silver Medal for heroism when he disarmed a man in the House galleries who was [illegible] wounding Members with a loaded revolver. During his career in Congress, he specialized in legislation promoting aviation, national defense, and measures to improve the unemployment situation. As a member of the Foreign Affairs Committee of the House, General Maas sponsored several international conferences designed to bring about better relations with foreign powers. Prior to World War II he sponsored legislation to fortify Guam and was joint author of legislation setting up a promotion system for the Navy. He also was sponsoring author of the Naval Reserve Act of 1938 which governed the Naval and Marine Corps Reserve until passage of the Armed Forces Reserve Act. He was also the congressional author of the legislation creating the first military women's reserve.

MARINE CORPS

General Maas entered the Marine Corps April 6, 1917. He served with Marine aviation in the Azores throughout the war. In 1926 he accepted a Marine Reserve commission prior to entering Congress. In the summer of 1941 he returned to active duty and served at sea on the staff of Adm. William Halsey and in 1942 with Adm. Frank J. Fletcher in the Solomons campaign. He also served as a Marine Corps observer with Gen. Douglas MacArthur in Australia and New Guinea. He was awarded the Silver Star Medal for service with the Army Air Force at the Battle of Milne Bay in 1942. He also won the Legion of Merit in combat. In addition he was awarded 12 other ribbons. In the fall of 1949 General Maas resumed his duties in Congress but returned to active duty in January 1951. In May of that year he resumed command of the Awase Air Base, Okinawa, where he received the Purple Heart. He was promoted to brigadier general in the Marine Reserve, June 1, 1950. Blindness overtook him in 1951 and on August 1 of that year he retired and was advanced to major general rank for having been specially commended in combat.

PUBLIC LIFE

For his untiring efforts in behalf of the Marine Corps Reserve he was known as "Mr. Marine Corps Reserve." For 6 years he served as a member of the Reserve Forces Policy Board in the Department of Defense. He served as chairman of the board, Marine Corps Reserve Officers Association, and was a past commander in chief, Military Order of the World War, past national commander, Disabled American Veterans (1955–56), and past national president of the Blinded Veterans Association (1960–61).

In his early business career he was a salesman and sales manager. Later, he managed a manufacturing firm in St. Paul, Minn. In 1935 he organized his own insurance firm. He was assistant to the board chairman of the Sperry Corp. from 1946 until recalled to active duty in the Korean conflict. He was a director of the United Services Life Insurance Co. and of Mutual of Omaha.

PRESIDENT'S COMMITTEE

On June 4, 1954, General Maas was awarded a degree of doctor of laws at the College of St. Thomas, St. Paul, Minn., his alma mater. Subsequently, he was honored by Marquette University, Goodwill Industries of America, United Cerebral Palsy, National Rehabilitation Association, American Foundation for the Blind, Tri-Organization Scientific and Rehabilitation Conference, 1961, and with the Veterans' Administration citation for exceptional service. In 1958 General Maas received the AMVETS Silver Helmet Award for his long career in public service.

On January 17, 1961, General Maas received a Presidential citation signed by President Eisenhower, noting his major contribution to the cause of the handicapped. On the following day he was presented with the Department of Defense Distinguished Public Service Medal in recognition of his contribution to national defense.

President Lyndon B. Johnson made the following statement upon being notified of General Maas' death, April 13, 1964:

"Not just the handicapped, but all the land grieves the passing of one of America's true heroes, Maj. Gen. Mel Maas.

"Blinded in the service of his country a decade ago, he fought himself a new existence without sight, traveled the world over, and inspired people everywhere about the capacities and abilities of the handicapped. Arthritis crippled his limbs, and massive heart attacks limited his mobility; yet his spirit was whole; his spirit was never disabled.

"He has shown us how to live in the face of adversity. His courage and conviction have enriched us all. His spirit marches in us and in our land."

The courageous and valiant spirit of Gen. Melvin J. Maas will live on for untold future generations through the designation of this hospital in his memory.

DEATH OF STUART URBACH

Mr. MUSKIE. Mr. President, I was shocked and saddened to learn of the sudden death last Saturday of Stuart Urbach, a senior analyst on the staff of the Advisory Commission on Intergovernmental Relations. All of us who are members of the Commission knew well the brilliance of his work as an expert in the law of Federal-State-local relations.

His efforts since 1961 produced two very important Commission reports. One, on the apportionment of State legislatures, has been cited by the U.S. Supreme Court and other Federal and State courts. His study of "The Problems of Special Districts in American Government" is a landmark in its field, and some of the recommendations in it are found in pending legislation.

Further, his wise advice and counsel was very highly valued by the Subcommittee on Intergovernmental Relations. He assisted in framing S. 561, the Intergovernmental Cooperation Act of 1965, which was passed by the Senate unanimously just 2 days before his death.

It is a tragedy that the career of this young man, already marked by such a high degree of accomplishment, should be cut short. All of us who work in the area of intergovernmental relations will miss his perceptive analysis of the Federal system, and the Federal Government will feel the loss of this dedicated servant.

RATIFICATION OF THE HAGUE PROTOCOL

Mr. KENNEDY of New York. Mr. President, the Senate has before it at this time two proposals which are of great importance to every American who travels abroad by airplane. Pending on the executive calendar is the Hague protocol, a series of amendments to the Warsaw Convention on international air travel. Pending in the Commerce Committee is S. 2032, a bill to require U.S. flag international air carriers to take out $50,000 in accident insurance for each passenger who flies with them. Together these items make up a package which the administration is seeking as a means of providing more adequate protection for international air travelers than they now receive under the Warsaw Convention.

Over 2 million Americans travel annually on international flights. Assuring that they and their families are adequately protected in case of accident is, consequently, a matter of widespread importance, and it is our responsibility in Congress to take a long and careful look at the Hague protocol and S. 2032 to see if these proposals will, in fact, do the job that needs to be done.

No one questions the fact that the protection now afforded international travelers is woefully inadequate. The question is what to do about it. The governing document at present is the Warsaw Convention, which has been in operation in this country since 1934. Under its provisions the liability of inter-

...to . . . air . . . passengers for loss of ... injury ... is limited ... $8,300 for each person, except where ... misconduct is established.

When Warsaw was adopted, these limitations made sense. Commercial air passenger transportation was in its formative stage and the airlines needed such protection. Without it one crash could have sent a company into bankruptcy.

Now, however, airlines are recording huge annual profits—both Pan American and TWA noted over $35 million after taxes last year. And the financial loss to a family in losing its breadwinner and the burdens involved in hospital and medical care are greater today than ever before. The $8,300 limitation in Warsaw is obviously unrealistic and extremely unfair.

In purported recognition of these facts the Hague protocol was adopted. Hague doubles the limitation on liability of international air carriers—to the still meager sum of $16,600.

Our State Department recognizes that Hague is inadequate by itself, and has proposed a complementary program of compulsory insurance. The $50,000 in insurance would be over and above the $16,600 in possible liability for negligence, so the two proposals taken together would increase the total possible recovery to $66,600.

In my judgment, this two-part program is insufficient. First, the monetary limit is too low. We all know of case after case in which the victim of an air crash was a young man in his thirties who left a wife and small children. The $66,600 doesn't begin to approach what his earning potential was. At the same time, over $66,600 is a windfall to someone in cases where there is no close relative. And finally, the insurance requirement would apply only to U.S.-flag carriers.

I do not oppose the idea of compulsory insurance—indeed, it is a welcome experiment, one which could serve as a model for reform in our tort law generally. But the present proposal is too inflexible and too limited. A much larger upper limit is needed, and a formula is needed to base the measure of recovery at least partially on the victim's earning potential and the number and closeness of his heirs. Further, the requirement should apply to foreign flag carriers as well. So structured, the insurance proposal would be a constructive experiment. If successful, it might be extended to other areas and ultimately have a most useful effect in relieving overburdened judicial dockets all over the country.

Let us assume that the insurance proposal is not modified, and instead comes before the Senate as it is now drafted. Would there be an alternative to the package of Hague and S. 2032? The answer is Yes, and the State Department has supplied it. State Department Legal Adviser Leonard Meeker made amply clear in his testimony before the Foreign Relations Committee May 26 and in a supplemental statement on June 14 that if the Senate does not ratify Hague, the State Department will seriously consider recommending the denunciation of the Warsaw Convention. His words could not be more plain:

> We do not think a sound argument can be made for remaining in the Warsaw Convention if the Senate does not advise and consent to the Hague Protocol.

Denunciation of Warsaw is specifically provided for in article 39 of the Convention. The effect of such action would essentially be to eliminate the arbitrary restrictions on recovery of damages for international air crashes, so that the victim of an accident in international transportation can get the same relief as the victim of a domestic accident.

I would not oppose Hague if I knew, when voting on it, that we had already enacted a truly adequate compulsory insurance plan as a supplement to it. But if Hague comes up before the fate of S. 2032 is known, I shall feel constrained to oppose it. As a practical matter, I doubt that there is sufficient support for even the modest and inadequate compulsory insurance scheme of S. 2032. Therefore, on the assumption that S. 2032 is either going to be reported as drafted or not reported at all, I shall oppose Hague unless an adequate insurance plan has already been passed.

The situation facing us is dramatized by a resolution which Congressman LESTER WOLFF of New York is introducing in the House today. Congressman WOLFF's resolution—with which I agree on the assumption that an adequate compulsory insurance plan will not be forthcoming—calls for the defeat of Hague in the Senate and the denunciation of Warsaw.

I urge the House to give early consideration to Mr. WOLFF's resolution. Its passage would let the Senate know the extent of the discontent with the combination of the Hague Protocol and S. 2032.

What we should all be seeking is fair protection for the international air traveler. If Hague and S. 2032 as a package is the only legislative possibility, I say we should not ratify Hague. Denunciation of Warsaw would be likely to follow a refusal to ratify Hague—and this is the result which is fairest to the traveler in the absence of a realistic compulsory insurance plan.

THE SIGNING INTO LAW OF THE SALINE WATER ACT

Mr. JACKSON. Mr. President, yesterday the President of the United States signed into law S. 24, the bill to extend the Saline Water Act authorizing research and development now being administered by the Secretary of the Interior.

President Johnson, in signing this act committed himself to a goal which I am confident if achieved will bring great rewards to the American people and indeed to many other nations. By his commitment he has thrown out a challenge to the Congress and the American people which must, and I am confident, will be met. In my opinion, the talents and resources of the American people will be mobilized in this important effort to solve the national and, indeed, international problem of water shortages.

Indicative of the widespread interest in water problems, there will be held in Washington in October the First International Symposium on Water Desalination. In conjunction with this the First International Water Desalination Exposition will also take place.

I ask unanimous consent that at this point in the RECORD a copy of the remarks of the President when he signed the bill yesterday be included in full along with a press release by the Secretary of the Interior announcing the forthcoming symposium and exposition on water desalination.

There being no objection, the remarks of the President and the press release were ordered to be printed in the RECORD, as follows:

REMARKS OF THE PRESIDENT AT THE SIGNING CEREMONY OF THE SALINE WATER CONVERSION ACT, S. 24, IN THE ROSE GARDEN, THE WHITE HOUSE

Senator ANDERSON, Senator JACKSON, Senator HICKEL, Congressman ASPINALL, Congressman SAYLOR, Governors Hughes, Scranton, Terry, and Rockefeller, members of the Cabinet, Members of Congress, my friends, I am very delighted to see so many Members of the House and many of my friends in the Senate come here this morning.

There is always a certain amount of cynicism among members of the executive branch and, I guess, sometimes among even members of the press about the productiveness of the Congress. I will measure my words when I say that over the last several weeks Congress has sent to the executive department, to my desk for signature, what appears to me to be an unprecedented procession of legislative measures which can only be described as truly historic and which I think is a tribute to every Member of both the House and Senate, of both parties.

It is my most studied and considered judgment, however, that this bill that you are witnessing being signed this morning will be the most historic of all of them; not for what it provides but rather for what it promises, not for what it accomplishes but rather for what it symbolizes.

True, this is a research and development bill, and it is only that. This legislation will not, by itself, build a single desalting plant in this country. But this is a commitment, the step across the threshold toward the breakthrough that must and will come, in my judgment, in the last half of the 1960's.

I may or may not be the most optimistic person in America about the progress we can make on desalting the seas, but I am, and I intend to remain, the most determined man that we shall make the great breakthroughs before the calendar turns to 1970.

I believe today what I believed in 1957 about space. That the greatest mistake the political system of a nation can make is to underestimate the pace of this century's advance of human knowledge and of this century's changing capabilities.

We need this research. We need this study. We need the experimentation that this bill provides—but we need to do more than spend all our time just learning.

So what does that mean? It means the time has come to set our sights, to pick our targets, and to act. For if we succeed, our success could well change the condition of man all around the world.

EXHIBIT BB--STEVENSON V. SUD AVIATION, ET AL., ORDER ENTERED SEPTEMBER 15, 1969 ANNEXED TO SUPPLEMENTAL AFFIDAVIT OF STANLEY J. LEVY

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

RICHARD STEVENSON, Executor of the Estate of JOSEPHINE STEVENSON, Deceased, et al., Plaintiffs, vs. SUD AVIATION, et al., Defendants.	No. 49234 and Nos. 49267 49762 51003 49268 49763 51056 49345 49764 51057 49471 49765 51579 49472 49766 51595 49473 49767 51636 49532 49768 51637 51644

ORDER ON PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT ON THE ISSUE OF LIABILITY AS TO DEFENDANT THAI AIRWAYS INTERNATIONAL LIMITED

Plaintiffs have filed a motion for partial summary judgment on the issue of the liability of Defendant Thai Airways International Limited. All plaintiffs have joined in this motion which is directed solely against the Defendant Thai Airways International Limited.

Plaintiffs have also filed a motion for shortening of time for service and to be heard with respect to their motion for partial summary judgment. Defendant Thai Airways International Limited did not object to the shortening of time for service and to be heard and, accordingly, the motion for partial summary judgment was heard by the Court on September 15, 1969.

The plaintiffs and defendant Thai Airways International Limited have stipulated and agreed to the following:

Exhibit BB Annexed to Supplemental Affidavit of Stanley J. Levy

1. This Court has proper venue to decide the motion for partial summary judgment as if the cases had been transferred to this Court under 28 USC 1404.

2. This Order shall apply and be effective in all of the above-captioned cases, including those originally filed in the Eastern District of New York (Nos. 51056 and 51057) and the Eastern District of California (No. 51003) and subsequently transferred to this Court under 28 USC 1407 for consolidated pre-trial and discovery proceedings.

3. The rights of the parties are governed by and subject to the provisions of the Convention for the Unification of Certain Rules Relating to International Transportation by Air signed at Warsaw on 12 October 1929, 49 Stat. 3000; T.S. 876 (commonly and hereinafter referred to as the Warsaw Convention).

The Court, having considered the papers filed in support of and in opposition to the motion for partial summary judgment and, further, having heard counsel for plaintiffs and for defendant Thai Airways International Limited, makes the following findings of fact and conclusions of law:

1. The passenger tickets issued to plaintiffs and their decedents are for all practical purposes the same in composition as the passenger tickets found to be defective under Article 3 of the Warsaw Convention by the Court of Appeals for the Second Circuit in Lisi v. Alitalia-Linee Aeree Italiane, S.p.A., 370 F. 2d 508 (2d Cir. 1966), aff'd by an equally divided court, 390 U.S. 455 (1968).

2. The provisions of the Warsaw Convention excluding (Article 20) or limiting (Article 22) the carrier's liability are unavailable unless the passenger tickets reasonably notify the passenger that those provisions are applicable to the transportation. Lisi v. Alitalia-Linee Aeree Italiane, S.p.A., 370 F. 2d 508 (2d Cir. 1966), aff'd by an equally divided court, 390 U.S. 455 (1968).

Exhibit BB Annexed to Supplemental Affidavit of Stanley J. Levy

3. The passenger tickets here, as in Lisi, fail to give the passengers the required notice. The language in the tickets in these cases is identical to that in the Lisi tickets and in both instances microscopic print is used and the language is placed in an ineffective position.

4. No genuine question of material fact exists.

5. Defendant Thai Airways International Limited is not entitled to avail itself of the provisions of the Warsaw Convention which exclude or limit liability.

Accordingly, IT IS ORDERED:

1. The affirmative defenses contained in the answers of defendant Thai Airways International Limited based upon Articles 20 and 22 of the Warsaw Convention are dismissed.

2. Plaintiffs are entitled to partial summary judgment on the issue of liability of defendant Thai Airways International Limited upon the basis of the presumptive liability created by Article 17 of the Warsaw Convention and the unavailability to said defendant of any opportunity to overcome this presumptive liability, by reason of this Court's determination that the provisions of the Warsaw Convention excluding or limiting liability are inapplicable in these cases.

3. Partial summary judgment on the issue of liability of defendant Thai Airways International Limited is hereby granted to plaintiffs [illegible]

Dated: Sept. 15, 1969

Judge, U. S. District Court

A 281

EXHIBIT CC--1969 C.A.B. REPORTS PAGE 879 RE DOCKET 17828 AGREEMENTS C.A.B. 20618, R-2 THROUGH R-5 ANNEXED TO SUPPLEMENTAL AFFIDAVIT OF STANLEY J. LEVY

to participate in the committee. We have decided not to condition our approval by imposing a requirement as to the number of carriers who must become signatories to the agreement before the committee can operate. However, we assume that the FAA will give due consideration to the number of eligible air taxi operators who participate in the committee in determining what weight it will give to the results of the scheduling committee meetings. Accordingly,

IT IS ORDERED—

1. That agreement CAB 20809 be and it hereby is approved subject to the following conditions:

(a) All air taxi operators who conduct scheduled IFR operations with transponder-equipped aircraft at the four airports in question or who contemplate and could conduct such operations by April 27, 1969, shall now be eligible to participate in the scheduling committee. Subsequent to April 27, 1969, any air taxi operator will be eligible to participate in the agreement at the time such carrier is prepared to begin scheduled IFR air taxi operations with transponder-equipped aircraft at the four airports in question.

(b) This approval also embraces (1) any agreement for the adjustment of schedules which may be made by the committee participants stemming solely from committee procedures in compliance with this order and (2) the participation of all subsequently eligible air taxi operators.

(c) At least 2 days before the initial meeting of the scheduling committee and at least 7 days before each subsequent meeting, a notice of such meeting shall be served upon all carriers described in subparagraph (a) above, the Department of Transportation, the Port of New York Authority, and the Federal Aviation Administration and filed with the Board.

(d) Representatives of the CAB, Department of Transportation, Federal Aviation Administration, all carriers described in subparagraph (a) above, all airport operators at the cities involved, and representatives of such cities shall be permitted to attend the meetings.

(e) The purpose of the scheduling committees shall be to facilitate the voluntary adjustments in carrier schedules so that the total operations of all parties will not exceed limitations imposed by regulations adopted by the FAA.

(f) Approval of the agreement shall not be construed as authorizing discussions or submission of information relating to city-pairs, rates, fares or charges, or other services in connection with air transportation.

(g) The scheduling committee shall file with the Board a report of each meeting held pursuant to the agreement including, inter alia, the date, place, attendance, and summary of discussions and information as to adjustments and/or reductions of schedules made by participants in the agreement. Copies of such report shall be served on the persons designated in subparagraph (a) above. The report shall be filed with the Board, in triplicate, within 14 days of the close of a scheduling committee meeting.

2. That the approval granted herein shall continue only so long as there are FAA regulations which limit the number of movements per hour by scheduled air taxi operators at the four airports;

3. That the Board shall retain jurisdiction over the agreement to take such further action at any time without hearing as it may deem appropriate;

4. That a copy of this order shall be served upon all carriers described in subparagraph (a) above, the Departments of Transportation and Justice, the Port of New York Authority, and the Federal Aviation Administration.

This order will be published in the Federal Register.

DOCKET 17823, AGREEMENTS CAB 20618, R-2 THROUGH R-5, AND 20627, R-1 THROUGH R-4, IATA AND ATC TICKETS AND CONDITIONS OF CARRIAGE—order 69-2-65 adopted February 13, 1969.

Agreements have been filed with the Board, pursuant to section 412(a) of the Federal Aviation Act of 1958 and part 261 of the Board's Economic Regulations between various air carriers, foreign air carriers, and other carriers, embodied in the resolutions of the traffic conferences of the International Air Transport Association (IATA), and adopted at the first meeting of the Passenger Traffic Procedures Committee and the 15th meeting of the Traffic Handling and Accountancy Working Group. The agreements have been assigned the above-designated CAB agreement numbers.

Resolutions R-2 through R-5 of agreement 20618 revise the form of passenger ticket and baggage check by deleting the brief notice of applicability of Warsaw Convention liability limitation from the face of the passenger coupon and providing that the notice as well as the conditions of contract shall be printed either on the inside of the front cover of the passenger ticket or on the reverse side of the passenger coupon. The notice is to

be printed in 8-point type, and the conditions of contract, in 6-point type. If tickets used are not large enough for so printing both the notice and conditions, the notice shall be printed on an additional insert. This brief notice draws attention to the separate notice entitled "Advice to International Passengers on Limitation of Liability." Except for this additional sentence, the notice is the same as that previously printed on the ticket face. Resolution R-4 revises the text of the conditions of contract principally by eliminating most of the reference therein to carrier limitation of liability. Since the proposed notice of conditions of contract appears generally to be an improvement over the present form, being briefer and in larger type, we will approve the resolutions subject to the following conditions and comments.

Section 221.175 of the Board's Economic Regulations sets forth requirements for giving notice of limitation of liability and also permits subscribing carriers to give the notice to passengers prescribed by agreement CAB 18900 in lieu of the form of notice set forth in the regulation. We shall condition our approval of resolutions R-2 through R-5 of agreement CAB 20618 upon observance of this regulation.

We note that the proposed revision of the conditions of contract results in the absence of any IATA requirement for giving notice of the level of the liability limitation for loss of, damage to, or delay in delivery of baggage. In withdrawing our previous requirements as to methods of giving notice, we reminded "all carriers, both foreign and domestic, of their obligation to provide notice as to liability limitations for baggage which is adequate depending on the particular conditions of the transportation," and we reserved "the right to take action to specify the notice of baggage liability limitations which should be required, should the carriers not fulfill their obligations to take care of this matter."[1] We again remind the carriers of this obligation and of our continuing interest in this subject.

Further, we note that the proposed conditions of contract omit a provision in the existing conditions that, as to checked baggage, a passenger has a right of action against the first or last carrier but retain the substance of another related stipulation that "5. An air carrier issuing a ticket or checking baggage for carriage over the lines of another air carrier does so only as its agent." Article 30(3) of the Warsaw Convention establishes a right of action by a passenger against the first and last carrier as well as against the carrier who performed the transportation during which the destruction, loss, damage, or delay took place. Since the stipulation that a carrier check baggage for carriage over the lines of another carrier as agent may indicate an absence of the responsibility imposed by the Warsaw Convention, the approval of the resolutions will be conditioned to require that, if carriers retain the proposed provisions in paragraph 5 of the ticket, the carrier also include in the same paragraph a statement that, "provided that in the case of checked baggage the passenger shall have a right of action against the first and last carrier and the carrier who performed the transportation during which the loss, damage, or delay took place."

The proposed conditions of contract require that complaint be made in writing to carrier within 7 days from receipt of baggage in case of damage and within 21 days from delivery in case of delay. This provision, contained in paragraph 7 of the conditions, is consistent with the provisions of the Hague Protocol to the Warsaw Convention and is acceptable for application to international travel. The Board by order 69-2-66 (50 C.A.B. 882), issued concurrently herewith, is acting upon an agreement adopted by the Air Traffic Conference of America providing for the application of the same conditions for domestic use, and the Board notes that the carriers intend that the conditions of contract will appear upon ticket stock used for both international and domestic travel. The notice provision, however, is substantially different from that contained in the domestic tariffs of the U.S. carriers providing for notice of claim in writing within 45 days after the occurrence giving rise to the cause of action. This rule was approved by the Board in the *Baggage Liability Rules Case*, 45 C.A.B. 182 (1966). The Board is aware of no basis for restricting the rule applicable to domestic travel, nor should the conditions suggest that the international rule is applicable for domestic transportation. Accordingly we are conditioning approval of the 7- and 21-day complaint requirements in the conditions of contract to provide that approval of the resolutions does not extend to the proposed provisions for application to travel which is not international travel; but approval of the resolutions will extend to paragraph 7 of the conditions of contract on condition that such paragraph be amended to limit its application to international transportation and to provide that applicable tariffs be consulted with respect to travel that is not international transportation.

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[1] Regulation ER-621, effective Jan. 15, 1968; order E 26119, dated Dec. 12, 1967.

Exhibit CC Annexed to Supplemental Affidavit of Stanley J. Levy

Resolutions R-1 through R-4 of agreement CAB 20527 are nonsubstantive amendments.[1]

The Board, acting pursuant to sections 102, 204(a), and 412 of the Act, makes the following findings:

(1) The Board does not find the following IATA resolutions, incorporated in the agreement indicated, to be adverse to the public interest or in violation of the Act:

CAB No.	IATA No.	Subject
20527:		
R-1	TC1 (15 THWG) 275	Form of passenger ticket and baggage check.
R-2	TC1 (15 THWG) 275	Form of passenger ticket and baggage check.
	TC2 (15 THWG) 275	
	TC3 (15 THWG) 275	
R-3	TC1 (15 THWG) 275	Form of passenger ticket and baggage check.
	TC2 (15 THWG) 275	
	TC3 (15 THWG) 275	
R-4	TC1 (15 THWG) 275g	Machine-issued ticket.
	TC2 (15 THWG) 275g	
	TC3 (15 THWG) 275g	

(2) The Board does not find the following IATA resolutions, incorporated in the agreement indicated, to be adverse to the public interest or in violation of the Act, provided that, insofar as air transportation as defined by the Act is concerned, such approval shall be subject to the following conditions:

CAB No.	IATA No.	Subject
20518:		
R-2	2nd (1 PTPC) 275	Form of passenger ticket and baggage check.
	3rd (1 PTPC) 275	
R-3	1st (1 PTPC) 275	Form of passenger ticket and baggage check.
R-4	1st (1 PTPC) 275b	Passenger ticket—conditions of contract.
	2nd (1 PTPC) 275b	
	3rd (1 PTPC) 275b	
R-5	1st (1 PTPC) 275g	Machine-issued tickets.
	2nd (1 PTPC) 275g	
	3rd (1 PTPC) 275g	

Provided that (1) such approval shall not relieve air carriers and foreign air carriers from complying, as necessary, with the provisions of section 221.175 of the Board's Economic Regulations, (2) approval of the resolutions is upon condition that, if a carrier retains the proposed provision in paragraph 5 of the conditions of contract, it shall also include in the same paragraph a statement that "provided that in the case of checked baggage the passenger shall have a right of action against the first and last carrier and the carrier who performed the transportation during which the destruction, loss, damage or delay took place," and (3) approval of the resolutions does not extend to the proposed provisions of the conditions of contract (paragraph 7 thereof), which require that complaint be made in writing to carrier within 7 days from receipt in case of damage and within 21 days from the date the baggage was delivered in case of delay with respect to application to travel which is not international travel; provided further, however, that approval of the resolutions will extend to paragraph 7 of the conditions of contract on condition that such paragraph be amended to limit its application to international transportation and to provide that applicable tariffs be consulted with respect to travel that is not international transportation. Accordingly,

IT IS ORDERED—

1. That agreements CAB 20527, R-1 through R-4, are approved;

2. That agreements CAB 20518, R-2 through R-5, are approved subject to the conditions stated in finding paragraph (2); provided, however, that the application of conditions (2) and (3) shall not be construed to prohibit the use of existing ticket stock for a period of 6 months from the date of this order.

Any air carrier party to the agreements, or any interested person, may within 15 days from the date of service of this order submit statements in writing containing reasons deemed appropriate, together with supporting data, in support of or in opposition to the Board's action herein. An original and 19 copies of the statements should be filed with

[1] The first paragraphs of resolutions R-2 and R-3 are superseded by agreement CAB 20618.

A 284

Exhibit CC Annexed to Supplemental Affidavit of Stanley J. Levy

the Board's Docket Section. The Board may, upon consideration of any such statements filed, modify or rescind its action herein by subsequent order.

This order will be published in the Federal Register.

AGREEMENT CAB 15725-A17, IATA INTERLINE IMPRINT TICKETS—order 69-2-66 adopted February 13, 1969.

On October 31, 1968, the members of the Air Traffic Conference of America filed pursuant to section 412 of the Federal Aviation Act of 1958, as amended, an agreement entitled "Interline Imprinted Ticket," which makes certain changes in the form used to transmit tickets to customers by teletype. The effect of the amendment is to bring it into conformity with a similar change in the ticket form used by members of the International Air Transport Association (IATA) in accordance with the Resolution 275g entitled "Machine Issued Ticket."

The Board is issuing concurrently order 69-2-65 (*IATA and ATC Tickets and Conditions of Carriage*, 50 C.A.B. 879 (1969)), which would approve the IATA resolution subject to certain conditions. The referenced order discusses in detail the need for the imposition of conditions. This discussion is equally applicable to the subject agreement, and for the reasons stated in order 69-2-65, the same conditions will be attached to our approval of agreement CAB 15725-A17.

Therefore, it is found that agreement CAB 15725-A17 is not adverse to the public interest or in violation of the Act if made subject to the conditions noted herein. Accordingly,

IT IS ORDERED, That agreement CAB 15725-A17 be and it hereby is approved subject to the following conditions:

(1) Such approval shall not relieve air carriers and foreign air carriers from complying, as necessary, with the provisions of section 221.175 of the Board's Economic Regulations,

(2) Approval of the resolutions is upon condition that, if a carrier retains the proposed provision in paragraph 5 of the conditions of contract, it shall also include in the same paragraph a statement that "provided that in the case of checked baggage the passenger shall have a right of action against first and last carrier and the carrier who performed the transportation during which the destruction, loss, damage, or delay took place";

(3) Provided that approval of the resolutions does not extend to the proposed provisions of the conditions of contract (paragraph 7 thereof), which require that complaint be made in writing to carrier within 7 days from receipt in case of damage and within 21 days from the date the baggage was delivered in case of delay with respect to application to travel which is not international travel; provided further, however, that approval of the resolutions will extend to paragraph 7 of the conditions of contract on condition that such paragraph be amended to limit its application to international transportation and to provide that applicable tariffs be consulted with respect to travel that is not international transportation; and

(4) That this order shall not be construed to prohibit the use of existing ticket stock for a period of 6 months from the date of this order.

AGREEMENT CAB 20512 ET AL., TRANS WORLD AIRLINES, AGREEMENTS WITH BWIA—order 69-2-103 adopted February 20, 1969.

Trans World Airlines, Inc. (TWA), has filed pursuant to section 412 of the Federal Aviation Act of 1958, as amended, certain agreements with British West Indian Airways, Inc. (BWIA), as follows: agreements CAB 20512 and 20512-A1, Advisory and Technical Assistance Services;[1] agreements CAB 20529 and 20529-A1, General Sales Agency; agreement CAB 20542, Ground Handling and Services, New York.

Under the advisory and technical assistance agreement, as amended, upon request by BWIA, TWA will assign up to four TWA employees who will advise and consult with BWIA's board of directors, executive committee, and management in BWIA's overall operations. It is contemplated that BWIA will request advisors qualified in finance, industrial relations, sales and services, and flight operations and technical services. One of the advisors will be designated by TWA as senior TWA advisor, who will serve as a liaison man between the TWA advisors and BWIA's board of directors and executive committee. It is further contemplated that BWIA will require his attendance, without voting rights, at all regularly scheduled meetings of both groups.

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[1] This agreement is similar in certain respects to a short-term agreement between TWA and BWIA, which was approved by order E-25459, Mar. 11, 1968 (48 C.A.B. 901), and order E-26779, May 19, 1968

Opinion-Order, Frankel, J. Granting Plaintiffs' Motion to Strike Defendants' Affirmative Defense.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

OPINION #44261

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FRANKEL, D.J.

On September 8, 1974, Trans World Airlines ("TWA") Flight 841, en route from Athens, Greece,[1] and bound for the John F. Kennedy Airport in New York City, crashed in the Ionian Sea, approximately 100 miles west of Araxos,

Opinion-Order, Frankel, J. Granting Plaintiffs' Motion to Strike Defendants' Affirmative Defense.

Greece. All persons aboard were killed. The crash has given rise to a number of suits here and in other federal courts, all of which are now in this court for pretrial purposes pursuant to a ruling of the Multidistrict Litigation Panel.

The instant action was brought in New Jersey, and transferred to this district, by the personal representatives, heirs, and next of kin of nine of the passengers who died in the crash. Named as the only defendants are the President and the Staff Vice President in charge of Audit and Security of TWA. The complaint alleges that the crash was due to the explosion of a bomb aboard the aircraft shortly after the takeoff from Athens. Further, it is alleged that the defendants, in their respective capacities at TWA, were responsible for the institution and maintenance of a security system sufficient to prevent placing of explosives on the aircraft, and that defendants' negligent failure to institute or maintain a satisfactory security system was the proximate cause of the disaster.

Defendants have interposed as a second affirmative defense the assertion that damages are limited to $75,000 for each decedent by the terms of the Warsaw Convention,[2] as supplemented by the Montreal Agreement.[3] Plaintiffs now move for an order, pursuant to Fed. R. Civ. P. 12(f), striking this second affirmative defense or, alternatively, for partial summary judgment under Rule 56.

The question thus raised is whether the Warsaw Convention's limitation of liability provisions are applicable to defendants, as employees of TWA, should they eventually be found liable.

Article 17 of the Warsaw Convention states:

> "The carrier shall be liable for damage sustained in the event of the death or wounding of a passenger or any bodily injury suffered by a passenger, if the acci-

> dent which caused the damage so sustained took place on board the aircraft or in the course of any of the operations of embarking or disembarking."

Article 22, as modified by the Montreal Agreement, provides:

> "In the transportation of passengers the liability of the carrier for each passenger shall be limited to the sum of [$75,000]."

Thus the relevant question, more precisely put, is whether the term "carrier" refers only to the corporate or other owning entity as such, here TWA, or also includes the employees and agents acting on the carrier's behalf.

The question has been ably and exhaustively briefed. It is by no means susceptible of a clear and entirely confident answer. It is answered here, for reasons which follow, in plaintiffs' favor.

1. The inquiry begins, though it cannot end, with the language of the treaty and its drafting history. See *Day* v. *Trans World Airlines, Inc.*, 528 F.2d 31, 33, 34 (2d Cir. 1975); McNair, *The Law of Treaties* 411-23 (1961). The Convention contains no definition of "carrier." Plaintiffs derive some textual support, if not a compelling argument, from the fact that the treaty language includes separate, distinguishing references to carriers and their agents.[4] There is no indication, however, of deliberate attention to the question now confronted.[5]

The uncertainty resulting from the silence of the Warsaw Convention on our problem is reflected by a split in the sparse decisional authorities.[6] The two federal district courts that have passed on closely analogous issues have reached opposite results. Compare *Pierre* v. *Eastern Air Lines, Inc.*, 152 F.Supp. 486, 489 (D.N.J. 1957),[7] with

Opinion-Order, Frankel, J. Granting Plaintiffs' Motion to Strike Defendants' Affirmative Defense.

Chutter v. *KLM Royal Dutch Airlines,* 132 F. Supp. 611, 613 (S.D.N.Y. 1955).[8]

2. With no unequivocal message from the language and history, we come to questions of policy. Here, again, there are pressures in both directions. The Warsaw Convention policy limiting liability, defendants' strongest support, had the well understood aim to protect infant air carriers from what were feared to be potentially fatal burdens of compensation to people injured or left bereaved while efforts to fly safely were proceeding.[9] It would be consistent with that policy to extend the protection to employees and agents, who might otherwise press for insurance or other forms of indemnity. And it is somewhat at odds with that policy to hold otherwise. It is not insignificant to note, however, that the original policy has lost a great deal of its persuasive force: air travel is no longer an infant industry.[10]

On the other side is a powerful national policy favoring compensatory damages from tortfeasors who cause personal injury. A corollary principle of equal importance is the aversion of our law toward stipulations by common carriers "without congressional authority * * * against their own negligence or that of their agents or servants." *United States* v. *Atlantic Mutual Insurance Co.,* 343 U.S. 236, 242 (1952); *New York Central Ry. Co.* v. *Lockwood,* 84 U.S. (17 Wall.) 357 (1873). The absence of any express absolution in the Warsaw Convention embracing "agents or servants" must be deemed a cogent factor in the setting of American law. American adherence to the Warsaw Convention was not prompt, nor has it ever been particularly enthusiastic.[11] As all agree, the liability of the wrongdoing agent is a separate and clear source of redress, distinct from and logically prior to that of the

principal. When the United States adhered to the Convention, it was not so exuberant a move as to warrant expansive constructions to amend firm national policies. This is, then, a fitting case in which to remember that a provision limiting liability for negligent injury is not readily to be inferred.[12] See, e.g., *Brady* v. *Roosevelt S.S. Co.*, 317 U.S. 575, 580-81 (1943).

On an issue not entirely dissimilar to the present one —on a claim perhaps less compelling, because dealing with property, not persons—the Supreme Court, in *Robert C. Herd & Co.* v. *Krawill Machinery Corp.*, 359 U.S. 297 (1959), considered the reach of limitation of liability provisions in the Carriage of Goods by Sea Act, 46 U.S.C. § 1304(5).[13] Refusing to extend to a negligent stevedore the provision limiting an ocean carrier's liability to $500 per package of a shipper's cargo, the Court said, *id.* at 301-02:

> "There is * * * nothing in the language, the legislative history or environment of the Act that expressly or impliedly indicates any intention of Congress to regulate stevedores or other agents of a carrier, or to limit the amount of their liability for damages caused by their negligence. It must be assumed that Congress knew that generally agents are liable for all damages caused by their negligence. Yet Congress, while limiting the amount of liability of 'the carrier [and] the ship,' did not even refer to stevedores or agents of a carrier. 'We can only conclude that if Congress had intended to make such an inroad on the rights of claimants [against negligent agents] it would have said so in unambiguous terms' and 'in the absence of clear Congressional policy to that end, we cannot go so far.' *Brady* v. *Roosevelt S.S. Co.*, 317 U.S. 575, 581, 584."

Opinion-Order, Frankel, J. Granting Plaintiffs' Motion to Strike Defendants' Affirmative Defense.

That interpretation of the Carriage of Goods by Sea Act is not conclusive, to be sure. But it is a highly persuasive analogy opposing the view of the defendants before us.

We are cited to authorities counseling strict construction of treaties, e.g., *Continental Dredging Co.* v. *County of Los Angeles,* 366 F.Supp. 1133, 1136 (C.D. Cal. 1973); cf., *Isbrandtsen Co.* v. *Johnson,* 343 U.S. 779, 783 (1951); *Texas & Pac. Ry. Co.* v. *Abilene Cotton Oil Co.,* 204 U.S. 427, 437 (1907), along with others suggesting liberality, e.g., *United States* v. *Pink,* 315 U.S. 203 (1942); *Valentine* v. *United States ex rel. Neidecker,* 299 U.S. 5 (1936); *Eck* v. *United Arab Airlines, Inc.,* 360 F.2d 804, 812 (2d Cir. 1966). See generally McNair, *The Law of Treaties* 364-92 (1961). Without resting too heavily upon canons, we know this is not a case for loose interpretations. The limitations for agents and employees would have been easy enough to specify. It was not stated. Those who acted for the United States in adhering to the Warsaw Convention had among their premises a strong animus against discovering liability limitations by implication. The totality of circumstances counsels against our inferring any such provision.

If the policy of protection of carriers were to be gutted by an interpretation against defendants, the demand for a less equivocal text might be untenable. But the fact is that a perfectly plausible compromise was possible that left the employees exposed. Indemnity was by no means automatic. Separate claims against employees, as the slight litigation history suggests, need not have been foreseen as major threats. Whatever speculative reasons may account for it, the drafters left out what defendants now seek, and the omission cannot be said to have been stultifying. Moreover, since the removal of the "due care defense,"[14] liability under the Warsaw Convention is cer-

tainly found under a different standard than liability outside it. See note 12, *supra*.

In short, if only the conflicting policies just noted were at stake, the court would incline to an interpretation favoring plaintiffs. But there is, as we proceed to note, at least a bit more to their position.

3. In 1955, most of the adherents and signatories to the Warsaw Convention adopted the amendments known for short as the Hague Protocol, officially "Protocol to Amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air Signed at Warsaw on 12 October 1929."[15] Among the amended provisions is a new Article 25A, which expressly resolves the issue before this court by extending the Warsaw limits of liability to the carrier's servants and agents acting within the scope of their employment.[16] The United States has declined to adhere to the Hague Protocol.

Both the Hague document and the non-assent of the United States are subjects arguable pro and con. The new Article 25A, it may be said, merely affirmed the pre-existing position.[17] Against that is the slightly stronger point that careful treaty drafters had omitted in Warsaw, then added at The Hague (using more than a few words for the purpose) what defendants claim was always there.[18] As to this country's nonadherence, it may be argued that such post-Warsaw events are not authoritative concerning what the Convention as agreed to should be taken to mean. On the other hand, the Senate has a large hand in the business of treaty-making and a duty of knowledgeable response preceding that of the courts. The failure to adopt the Hague Protocol, considered always in the setting of apposite national policies, and in the swirl of dissatisfaction with any limitations in the Warsaw Convention,

see note 11, *supra,* is a datum "relevant in ascertaining the proper construction * * * [of] the treaty's various provisions," *Day* v. *Trans World Airlines, Inc.,* 528 F2d 31, 35 (2d Cir. 1975).

4. Defendants raise several other issues in resisting this motion. First, they contend that the contract of carriage between TWA and the decedents,[19] as well as TWA's tariff provisions, filed with the Civil Aeronautics Board,[20] entitle them to the $75,000 limitation because both the contract and the tariff explicitly extend the carrier's limitation of liability to cover "agents, servants and representatives" of the carrier. Reference has been made in this connection to 14 C.F.R. § 221.38(j) (1975), which provides, *inter alia,* that

> "each air carrier and foreign air carrier shall publish in its tariffs a provision stating whether it avails itself of the limitation on liability to passengers as provided in Article 22(1) of the Warsaw Convention or whether it has elected to agree to a higher limit of liability by a tariff provision. Unless the carrier elects to assume unlimited liability, its tariffs shall contain a statement as to the applicability and effect of the Warsaw Convention * * *."

It has been established, however, by authoritative rule that the tariff provisions of an international carrier, whatever their effects in other countries, cannot impose limits of liability more stringent than those under the Warsaw Convention.[21] TWA, in its tariff, recognizes this rule:

> "Rules stating any limitation on, or condition relating to, the liability of carriers for personal injury or death are not permitted to be included in tariffs filed pursuant to the laws of the United States, except to

> the extent provided in Rule 16(B)(1) with respect to Tariff C.A.B. No. 17, any [*sic*] such limitation or condition in any rule herein is not a part of Tariff C.A.B. No. 17, except to the extent provided in Rule 16(B)(1) with respect to Tariff C.A.B. No. 17, filed with the Civil Aeronautics Board of the United States. Nothing in this Tariff modifies or waives any provision of the [Warsaw] Convention.''[22]

The quoted exception referring to Joint Tariff Rule 16(B)(1) is no help to defendants; that Rule simply refers to Article 22(1) of the Warsaw Convention. To the extent any other limitations are included, TWA goes on to acknowledge, they are applicable only in tariffs filed in other countries.[23]

It is evident, in sum, that the tariff provision defendants invoke gives them no more immunity than they may have under the Warsaw Convention.

Defendants' arguments from the tickets decedent bought are more clearly unavailing: the ticket clearly cannot create limitations forbidden by the tariff.[24]

5. Finally, defendants argue that as corporate officers of TWA acting within the scope of their employment, they could be liable, if at all, only for misfeasance or malfeasance, not nonfeasance. The parties discuss this contention variously in terms of New Jersey and New York law without touching explicitly on the possible conflicts of law issue.

Plaintiffs, all residents of states "other than New Jersey,'' filed this action in New Jersey, where defendants are residents. The case was thereafter transferred to this court. The complaint alleges jurisdiction pursuant to 28 U.S.C. §§ 1332 and 1333, 46 U.S.C. § 761 *et seq.* ("Death on High Seas Act''), and general maritime law. It is not at all clear at this stage what law will be

deemed applicable in determining the liability *vel non* of defendants as officers of TWA. Nor is it possible at this stage to know what the consequences of applying any particular body of law will come to be.

While New York, with varying degrees of rigor, still applies in certain situations the misfeasance-nonfeasance distinction for corporate agents, *Jones* v. *Archibald*, 45 A.D. 2d 532, 360 N.Y.S. 2d 119 (4th Dept. 1974); *Michaels* v. *Lispenard Holding Corp.*, 11 A.D.2d 12, 201 N.Y.S.2d 611 (1st Dept. 1960), the distinction has disappeared in other states, see, e.g., *Miller* v. *Muscarelle*, 67 N.J. Super. 305, 170 A.2d 437, 445-51 (A.D.), certification denied, 36 N.J. 140, 174 A.2d 925 (1961). Although TWA is headquartered in New York, it is impossible to say at this moment that New York law necessarily should control, especially when considering the interests of decedents and the policies of their respective states.

It is also to be noted that the nonfeasance-misfeasance distinction, itself never very clear,[25] has exceptions, even where it is found to apply, depending, *inter alia*, on the power and responsibility of the corporate officers.[26] This issue, as well as the basic factual question whether the asserted negligence constituted nonfeasance or misfeasance, depends on evidence yet to be adduced.

In conclusion, the motion to strike defendants' second affirmative defense will be granted, as the Warsaw Convention does not limit the liability of employees or agents of a carrier, and TWA's tariff does not purport to otherwise limit its, or its employees', liability.

So ordered.

Dated, New York, New York
April 19, 1976

s/ MARVIN E. FRANKEL
U.S.D.J.

Opinion-Order, Frankel, J. Granting Plaintiffs' Motion to Strike Defendants' Affirmative Defense.

FOOTNOTES:

[1] The flight had originated in Tel Aviv, Israel.

[2] The Warsaw Convention is officially denominated "Convention for the Unification of Certain Rules Relating to International Transportation by Air." Concluded at Warsaw on October 12, 1929, the Convention is reproduced (in an English translation of the official French version) at 49 Stat. 3000 (1934). The Convention was the result of two international conferences, one held in Paris in 1925 and the second in Warsaw in 1929, and of the work done by the interim Comité International Technique d'Experts Juridique Aeriens ("CITEJA"). See generally Ide, *The History and Accomplishments of the International Technical Committee of Aerial Legal Experts (C.I.T.E.J.A.)*, 3 J. Air L. & Comm. 27 (1932). The United States, which had not participated in the work of CITEJA, and had observed, but not participated in, the Warsaw Conference, proclaimed adherence to the treaty in 1934. 78 Cong. Rec. 11, 582 (1934) (Congressional approval); T.S. No. 876, 49 Stat. 3000 (1934).

[3] The Montreal Convention is officially denominated "Agreement Relating to Liability Limitation of the Warsaw Convention and the Hague Protocol," signed May 13, 1966. The motivating force was "a torrent of criticism of the stringent Warsaw limitations of liability," *Day* v. *Trans World Airlines, Inc.*, 528 F.2d 31, 36 (2d Cir. 1975), which had held liability to $8,300 and provided the carriers with a defense of due care. *Id.* The State Department filed, on November 15, 1965, a formal notice of denunciation of the Warsaw treaty, to take effect six months later unless the principal international air carriers agreed to raise their liability ceiling, 50 Dept. State Bull. 923 (1965). The result of the Montreal Convention, which was accepted by the State Department, 54 Dept. State Bull. 955-57 (1966), was to raise the limit of liability to $75,000, including costs of litigation (or $58,000 plus costs of litigation in jurisdictions where there are provisions for separate awards of such costs), without regard to fault on the part of the carrier.

[4] See, e.g., Article 20(1):

> "The carrier shall not be liable if he proves that he and his agents have taken all necessary measures to avoid the damage or that it was impossible for him or them to take such measures."

See also Article 25. A discussion of this argument may be found in M. Kamminger, *The Aircraft Commander in Commercial Air Transportation* 91 (1953); Pratt, *Carriage by Air Act—Limitation*

of Air Carrier's Liability—Whether Servants of Carrier Also Protected, 41 Can.B.Rev. 124, 128 (1963).

[5] Plaintiffs apparently agree, citing Ide, *The History and Accomplishments of the International Technical Committee of Aerial Legal Experts (C.I.T.E.J.A.),* 3 J. Air L. & Comm. 27, 31, 37, 40 (1932), in making the statement that "the topic [of the status of crew members] was not treated at the Warsaw Conference."

Reference from the minutes to which the court's attention has been drawn seem at most to graze our problem. For example:

> "Before examining the articles of the draft, it is necessary to bring out the fact that in this field, international agreement cannot be obtained unless it is limited to certain determined problems. Therefore the text only applies to the contract of carriage—first with respect to its external forms, and second in the legal relationships which are established between the carrier and the persons carried or the shipper. It does not govern any other questions which the exploitation of the carriage may bring out."

Report of Henry DeVos, submitting the CITEJA draft text to the Warsaw Conference, Minutes of the Warsaw Convention, p. 160, as contained in Calkins, *Grand Canyon, Warsaw and the Hague Protocol,* 23 J. Air. L. & Comm. 253, 267 n. 7 (1956). See also the comments of Sir Alfred Dennis (of Great Britain), Minutes of Warsaw Convention, p. 29:

> "The exception of navigational errors of the command of the aircraft, at first glance, does not seem to be in accord with common law, because under common law, a carrier is generally responsible for the errors of his agent."

See also *id.* at 44; comments of Mr. Ambrosini, of Italy, *id.* at 44.

[6] For a discussion of the "conflicting opinions and decisions," see Pratt, *Carriage by Air Act, 1952—Limitation of Air Carrier's Liability—Whether Servants of Carrier Also Protected,* 41 Can. B. Rev. 124 (1963).

[7] See also *Stratton* v. *Trans Canada Air Lines,* 27 D.L.R.2d 670 (British Columbia Supreme Ct. 1961), *aff'd on other grounds,* 32 D.L.R.2d 736 (British Columbia Ct. App. 1962).

[8] See also *Wanderer* v. *Sabena and Pan American Airways, Inc.,* 1949 U.S. Aviation Reports 25 (Sup. Ct. N.Y. County 1949).

[9] Lowenfeld & Mendelsohn, *The United States and the Warsaw Convention,* 80 Harv. L. Rev. 497, 499 (1967); cf. Senate Comm.

on Foreign Relations, *Message from the President of the United States Transmitting a Convention for the Unification of Certain Rules*, Sen. Exec. Doc. No. G., 73rd Cong., 2d Sess. 3-4 (1934).

[10] We are reminded by *Day* v. *Trans World Airlines, Inc.*, 528 F.2d 31, 35 (2d Cir 1975), that treaties, like constitutions, must be interpreted in light of modern day considerations: "For a court to view a treaty as frozen in the year of its creation is scarcely more justifiable than to regard the Constitutional clock as forever stopped in 1787."

[11] Past decades have seen an outpouring of criticism surrounding the Convention's limitations on liability. See, e.g., 111 Cong. Rec. 15032 (1965) (remarks of Senator Yarborough; *id.* at 16125-26 (remarks of Senator Ervin); *id.* at 20164 (remarks of Senator Robert Kennedy); see generally, Lowenfeld & Mendelsohn, *supra* note 9, cf. *Day, supra* at 36.

[12] Nor is the inference a necessary one. The present importance of the Warsaw Convention lies primarily in its assurance of at least some level of compensation, without the difficult and time-consuming necessity of proving negligence or lack of due care, *Day, supra* at 34, 36-37. Recoveries against persons other than the airline, in suits involving traditional standards of proof of negligence or breach of warranty, are not inconsistent with the standard of limited liability where far less is required for recovery.

[13] "Neither the carrier nor the ship shall in any event be or become liable for any loss or damage to or in connection with the transportation of goods in an amount exceeding $500 per package lawful money in the United States, * * * unless the nature and value of such goods have been declared by the shipper before shipment and inserted in the bill of lading."

[14] The "due care" defense was removed when the Montreal Agreement was adopted in 1966. *Day, supra* at 36.

[15] A concise history of the drafting of the Hague Protocol, and the subsequent failure of the United States to adopt it, is given in Lowenfeld & Mendelsohn, *supra* note 9, at 504-52.

[16] Article 25A provides:

> "(1) If an action is brought against a servant or agent of the carrier arising out of damage to which this Convention relates, such servant or agent, if he proves that he acted within the scope of his employment, shall be entitled to avail himself of the limits of liability which that carrier himself is entitled to invoke under Article 22.

"(2) The aggregate of the amounts recoverable from the carrier, his servants and agents, in that case, shall not exceed the said limits.

"(3) The provisions of paragraphs (1) and (2) of this article shall not apply if it is proved that the damage resulted from an act or omission of the servant or agent done with intent to cause damage or recklessly and with knowledge that damage would probably result."

[17] See, e.g., Comments of Mr. Stalder of Switzerland, in 1 *International Conference on Private Air Law, The Hague, September 1955, Minutes* 216 (ICAO Doc. 7686-LC/140 1956) ("*Mr. Stalder* (Switzerland) stated that the Swiss Delegation saw no necessity for amending the Convention by an Article 25A. However, in order to assist the courts which would have to pass judgment on cases now carefully regulated by this article, he was prepared to accept it"); Comments of Mr. Ambrosini of Italy, *id.* at 220 ("He had always thought that the Warsaw Convention regulated not only the liability of the carrier, but, at the same time, that of his servants or agents"); cf. Beaumont, *The Proposed Protocol to Warsaw Convention of 1929*, 20 J. Air. L. & Comm. 264, 270 (1953) (the proposed draft of Article 25A "would set at rest serious doubts which have been expressed in connection with Article 25 concerning the position of servants and agents of the carrier"); Comments of the Netherlands, in 2 *International Conference on Private Air Law, The Hague, September 1955,* Documents, 171 (ICAO Doc. 7686-LC/140 1956); 1 *International Conference on Private Air Law, Guadalajara. August-September 1961, Minutes* 138 (ICAO Doc. 8301-LC/149-1 1962).

[18] See, e.g., Comments of Mr. Alten of Norway, 1 *International Conference on Private Air Law, The Hague, September 1955, Minutes* 214 ("The preamble of the Warsaw Convention provided that the Convention had been adopted in order to secure a uniform regulation of the conditions of carriage in regard to the documents used for such carriage and the liability of the carrier. The Convention contained no provision concerning the liability of servants or agents. * * * The servants or agents of the carrier were not parties to the contract of carriage"); Comments and Proposals of the German Federal Republic, in 2 *International Conference on Private Air Law, The Hague, September 1955, Documents* 224; cf. Comments of Mr. Pedreira of Portugal, 1 *International Conference on Private Air Law, The Hague, September 1955, Minutes* 221 ("a principle limiting the liability of servants or agents was useful and just for the servant or agent deserved

the same protection as the carrier"); Comments of Mr. Booth of Canada, *id.* at 218 ("the absence of such a clause would permit a complete evasion of the provisions of the Convention in regard to the limits of liability of the carriers.")

[19] Paragraph 6 of the standard International Air Transport Association (I.A.T.A.) Airline ticket used by TWA, provides:

> "Any exclusion or limitatiton of liability of carrier shall apply to and be for the benefit of agents, servants and representatives of carrier and any person whose aircraft is used by carrier for carriage and its agents, servants and representatives."

[20] Passenger Rules Tariff No. R-3, Rule 16(c)(12) of TWA (C.A.B. No. 17), provides:

> "Any exclusion or limitation of liability of Carrier under this tariff or the ticket shall apply to agents, servants, or representatives of the Carrier acting within the scope of their employment and also to any person whose aircraft is used by the Carrier and its agents, servants or representatives acting within the scope of their employment."

[21] While the language does not convey the message with entire clarity, this prohibition results from 14 C.F.R. § 221.38(h), which states:

> "No provision of the Board's regulations issued under this part or elsewhere shall be construed to require on and after March 2, 1954, the filing of any tariff rules stating any limitation on, or condition relating to, the carrier's liability for personal injury or death. No subsequent regulation issued by the Board shall be construed to supersede or modify this rule of construction except to the extent that such regulation shall do so in express terms."

And the C.A.B., by Order Serial No. E-8756, 19 Fed. Reg. 7387, issued November 10, 1954, required all carriers and foreign air carriers to cancel from their tariffs, on or before January 1, 1955, all rules, regulations, or provisions stating any limitation on, or condition relating to, carrier liability for personal injury or death. The effect of these rules and regulations is to ban any further restrictions to the Warsaw Convention's limitation of liability. Pratt, *Tariff Limitations on Air Carriage Contracts*, 29 J. Air. L. & Comm. 14, 20 (1963). See also Warsaw Convention, Article 23. The cited regulation, 14 C.F.R. § 221.38(j), states no more than this.

Since the C.A.B. has so provided, we need not decide whether the C.A.B. would have the power, absent explicit Congressional

directive, to extend the limitations of liability for personal injury or death. See, however, Warsaw Convention Article 23 (no limit of liability beyond that found in the Warsaw Convention). Compare *Lichten* v. *Eastern Air Lines, Inc.*, 189 F.2d 939 (2d Cir. 1951), with *Brady* v. *Roosevelt S.S. Co.*, 317 U.S. 575 (1943).

[22] Passenger Rules Tariff No. R-3, Rule 2 of TWA (C.A.B. No.17); *id.*, note to 16(C)(2).

[23] TWA has stated that insofar as its tariff provides for any limitation which goes beyond the Warsaw Convention, it is included only "as part of the tariff filed with governments other than the United States," where, it is remembered the Hague Protocol may well be in effect. Passenger Rules Tariff No. R-3, Rule 2 of TWA (C.A.B. No. 17); *id.*, note to 16(C)(2).

[24] Joint Tariff, Article 18; see also 49 U.S.C. § 1373 (1970); *Tishman & Lipp* v. *Delta Air Lines*, 413 F.2d 1401 (2d Cir. 1969); *Lichten* v. *Eastern Air Lines, Inc.*, 189 F.2d 939, 941 (2d Cir. 1951); *Randall* v. *Frontier Airlines, Inc.*, 397 F. Supp. 840 (W.D. Ark. 1975); *Berkman* v. *TWA, Inc.*, 209 F. Supp. 851, 853 (S.D.N.Y. 1962); *Wittenberg* v. *Eastern Air Lines, Inc.*, 126 F. Supp. 459 (E.D.S.C. 1954); *Eastern Air Lines, Inc.* v. *Williamson*, 282 Ala. 421, 211 So. 2d 912 (1968); *New York & Honduras Rosario Mining Co.* v. *Riddle Airlines, Inc.*, 3 A.D.2d 457, 162 N.Y.S.2d 314 (1st Dept. 1957), aff'd, 4 N.Y. 2d 756, 149 N.E. 2d 93 (1958); Note, *Air-Carrier Tariff Provisions Limiting Liability for Negligence*, 70 Harv. L. Rev. 1282, 1282 (1957); Markham & Blair, *The Effect of Tariff Provisions Filed Under the Civil Aeronautics Act*, 15 J. Air. L. & Comm. 251 (1948).

[25] See generally W. Prosser, *Torts* 339-40 (4th ed. 1971).

[26] See, e.g., 3A *Fletcher Cyclopedia Corporations* §1135 at 203 (1975):

> "The rules governing liability of agents in general, to third persons, for their torts, as laid down in textbooks on the law of agency, are almost invariably applicable to the liability of corporate officers to third persons for their torts * * *. The rule of nonliability for the negligence of an agent or servant on account of nonfeasance is limited to breaches of duty owed by him to his principal, and has no application where there is a breach of duty owing by the agent himself to third persons."

See also Restatement, Second, Agency § 354; *id.*, Reporter's Notes to Sections 305-357 at 581 (Appendix).

Memorandum Order Certifying Case for an Interlocutory Appeal.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

44278

FRANKEL, D. J.

The parties are agreed that the question decided in the court's opinion dated April 19, 1976, should be certified for an interlocutory appeal under 28 U.S.C. § 1292(b). They concur in the view that the decision denying employees and agents the limitation of liability given by the Warsaw Convention involves a controlling question of law as to which there is substantial ground for differing opinions; it is also agreed that an immediate appeal may serve to advance materially the ultimate determination of the litigation. The court is in entire agreement with these shared views of counsel. It appears, moreover, that an interlocutory appeal may serve purposes broader than the usual ends achieved by such a procedure. Since this court is seized of numerous cases in multidistrict pretrial proceedings, the advancement of a dispositive ruling herein may have useful effects in additional litigations.

Accordingly the opinion-order of April 19, 1976, is amended to incorporate the court's "opinion that such order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation. . . ."

Dated, New York, New York
April 21, 1976

MARVIN E. FRANKEL
U.S.D.J.

Order of the Court of Appeals Granting Leave to Appeal Pursuant to 28 U.S.C. Sec. 1292(b).

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Court House, in the City of New York, on the twenty-first day of May, one thousand nine hundred and seventy-six.

RUTH ANN REED, as Administratrix of the Estate of Dan William Reed, deceased, and as parent, natural guardian, and best friend of Cynthia Ann Reed, Debora Lynn Reed and Julie Marie Reed, all infants, et al.,

Plaintiffs,

v.

FORWOOD CLOUD WISER, JR., and RICHARD E. NEUMAN,

Defendants.

It is hereby ordered that the motion made herein by counsel for petitioner dated April 30, 1976 for leave to appeal pursuant to 28 United States Code § 1292 (b) be and it hereby is granted.

HON. J. EDWARD LUMBARD
HON. J. EDWARD LUMBARD

HON. HENRY J. FRIENDLY
HON. HENRY J. FRIENDLY

HON. JAMES L. OAKES
HON. JAMES L. OAKES
Circuit Judges

Due and timely service of TWO copies of the within APPENDIX is hereby admitted this 9TH day of AUGUST 1976

.....
Attorneys for APPELLANTS

COPY RECEIVED

AUG 9 1976

KREINDLER & KREINDLER

Joyce Bogard